

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THIRD APPELLATE DISTRICT

(Nevada)

PETER C. BRONSON et al.,

Plaintiffs and Appellants,

v.

EMC MORTGAGE CORPORATION et al.,

Defendants and Respondents.

C079911

(Super. Ct. No. CU11078020)

Peter and Carolyn Bronson obtained a \$1 million adjustable-rate loan based on their promissory note and secured by a deed of trust on real property. The loan and its servicing were transferred among several companies over time. Defendants in this action are those companies that had some part in owning or servicing the loan. Eventually, the Bronsons were not able to make the payments on the loan and sought a loan modification.

In this action, the Bronsons attempt to preempt a nonjudicial foreclosure and seek damages based on the transfers of the loan, its servicing, and the conduct of those

companies with respect to the Bronsons. The trial court granted summary judgment against the Bronsons.

Peter Bronson is an attorney and represents himself and his wife Carolyn in this appeal. The Bronsons now contend (1) contrary to the holding of *Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 814-815 (*Saterbak*), they have standing to preempt the nonjudicial foreclosure, and (2) the trial court erred in summarily adjudicating various causes of action.

We conclude the trial court was correct in every aspect of its summary judgment order.

1. Under *Saterbak, supra*, 245 Cal.App.4th 808, the Bronsons do not have standing to preempt a nonjudicial foreclosure, which precludes their causes of action for quiet title, removal of cloud on title, injunction, and declaratory relief.

2. In addition, the trial court did not err in summarily adjudicating certain causes of action. (A) The breach of contract cause of action is without merit because, contrary to the Bronsons' allegation, defendants did not promise to consider a loan modification in April 2009; (B) the fraud by concealment cause of action, alleging concealment of irregularities in the transfer of the loan and its servicing among several companies, is without merit because defendants had no duty to disclose to the Bronsons the details of the transfer of the loan and its servicing; (C) the undisputed facts do not support the intentional misrepresentation cause of action because there was no relevant misrepresentation; (D) the unfair business practices cause of action is without merit because the alleged practices involved dealings between defendants and not dealings with the Bronsons; (E) the Bronsons concede there is no merit to the conversion cause of action; and (F) the Bronsons fail to make an adequate argument, supported by authority, that the trial court erred by summarily adjudicating the cause of action for intentional infliction of emotional distress.

We will affirm the judgment.

BACKGROUND

The Bronsons obtained their \$1 million loan from defendant GreenPoint Mortgage Funding in 2005 for the purchase of real property in Nevada County. The interest rate on the loan was adjustable; consequently, the loan agreement notified the Bronsons that the interest rate and the monthly payment, which was initially \$3,216.40, could change by the terms of the loan agreement. The Bronsons also executed a deed of trust in which Mortgage Electronic Registration Systems, Inc. (MERS) was named the beneficiary.

Two months after the Bronsons obtained the loan, Structured Asset Mortgage Investments II, Inc. (SAMI) purchased the loan from GreenPoint, and SAMI entered into a pooling and service agreement (PSA) with EMC Mortgage Corporation (EMC) and Wells Fargo Bank, N.A. (Wells Fargo). EMC became the servicer of the loan, and Wells Fargo became the custodian and trustee. JPMorgan Chase Bank, N.A. (Chase) later purchased EMC's servicing rights but continued to operate under the EMC name.

During discovery in this case, the trial court ordered that defendants were deemed to have admitted several facts concerning the transfers and assignments among themselves because they did not respond adequately to the Bronsons' request for admissions. Among those facts were that the signatures on some of those documents were falsified and backdated.

The Bronsons made their monthly payments under the terms of the loan through 2008; however, the payments did not cover all the interest on the loan. In 2008, the amount owed on the loan was 110 percent of the original loan amount. In that year, under the terms of the loan agreement, the monthly payment was adjusted to \$7,525.37. By April 2009, the Bronsons were in arrears on the loan by over \$22,000.

In April 2009, EMC and the Bronsons entered into a repayment plan. The written plan stated that EMC would forbear collections procedures if the Bronsons made three monthly payments of \$7,081.63 in April, May, and June. The Bronsons alleged that EMC also orally agreed that these three payments would be the first step toward a loan

modification. But the Bronsons admit they are not eligible for federal law programs that require banks to offer permanent loan modifications, because they owe too much on the loan.

In opposition to defendants' motion for summary judgment, Peter Bronson said that from 2009 to 2011, EMC represented "it was considering a loan modification but, in fact, was making serial misrepresentations to my wife and me; shuttled us from representative to representative; repeatedly required us to submit the same voluminous documents over and over again based on misrepresentations that EMC either had lost or had never received the documents; and, in our view, never intended to offer us the modification we sought. It appears that EMC utilized the purported modification process as a means of obtaining as much money as possible from us before attempting to foreclose on the Property." We need not recite the details of these dealings between EMC and the Bronsons because they are not material to the resolution of this appeal.

In January 2010, the Bronsons were in arrears on the loan by \$34,345.11. Wells Fargo directed Cal-Western Reconveyance Corporation to initiate foreclosure proceedings by recording a notice of default and election to sell under the deed of trust, and, in April 2010, Cal-Western substituted in as trustee in Wells Fargo's place. At the same time, MERS transferred the beneficial interest in the loan to Wells Fargo.

In May 2011, EMC offered a written loan modification plan to the Bronsons conditioned on three payments of \$6,906.90 over three months starting in July 2011. The Bronsons made the first payment under this trial payment plan, but did not make the others.

The Bronsons filed their complaint in this case in November 2011. They alleged causes of action that can be categorized as an attempt to either (1) preempt foreclosure on the property or (2) obtain a damages award. At the time of the summary judgment proceedings, the causes of action remaining to preempt foreclosure were for quiet title (tenth cause of action), removal of cloud on title (eleventh cause of action), injunction

(thirteenth cause of action), and declaratory relief (fifteenth cause of action). The causes of action remaining to obtain a damages award were for breach of contract (first cause of action), fraud by concealment (fourth cause of action), intentional misrepresentation (sixth cause of action), unfair business practices (eighth cause of action), conversion (ninth cause of action), and intentional infliction of emotional distress (fourteenth cause of action).

On August 28, 2012, the trial court granted a preliminary injunction, enjoining any foreclosure on the Bronsons' real property. In April 2013, Cal-Western recorded a notice of rescission of the notice of default and election to sell under the deed of trust. As of December 2014, EMC had advanced a total of \$103,461.15 for the Bronsons' property taxes and homeowner's insurance. The unpaid principal balance of the loan was \$1,072,595.55, and the total amount due to pay off the loan was \$1,399,277.17.

However, on May 7, 2015, the trial court granted defendants' motion for summary judgment. As to the claims attempting to preempt foreclosure, the trial court concluded the Bronsons do not have standing. As to the claims seeking damages, the trial court found there were no triable issues of material fact and defendants were entitled to judgment as a matter of law. The trial court entered judgment against the Bronsons and in favor of defendants and vacated its prior order granting the preliminary injunction.

STANDARD OF REVIEW

A trial court properly grants summary judgment when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., 437c, subd. (c).) The moving party bears the burden of proof and must establish that a reasonable trier of fact could not find any relevant underlying fact in favor of the opposing party in accordance with the applicable standard of proof. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) We review the trial court's decision granting summary judgment de novo, independently examining the record to determine whether triable issues of fact exist and viewing the evidence in the light most favorable to the

party opposing summary judgment. (See *Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.)

DISCUSSION

I

The Bronsons contend the trial court erred in ruling that a borrower in default on a promissory note lacks standing to challenge the right of the holder of the note to conduct a nonjudicial foreclosure. Four of the Bronsons' claims -- for quiet title, removal of cloud on title, injunction, and declaratory relief -- are an attempt to preempt the nonjudicial foreclosure by establishing that defendants were not the rightful holders and servicers of the note because of irregularities in the transfers and assignments of the loan and its servicing. The trial court concluded the Bronsons do not have standing to challenge the assignment of the loan in order to preempt nonjudicial foreclosure. We agree.

According to the Bronsons, defendants could not establish that defendants obtained the rights under the note (including the right to foreclose) by assignment from the prior holders of the note, and thus they had no right to conduct a nonjudicial foreclosure. In support of their argument, the Bronsons cite *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919 (*Yvanova*), which involved a borrower that had defaulted on a promissory note secured by a deed of trust on real property. After the holder of the promissory note completed a nonjudicial foreclosure, the borrower sued for wrongful foreclosure, alleging that the holder of the note did not validly obtain rights under the note by assignment because the assignment was void. The California Supreme Court determined that the borrower had standing to sue. The court held that “a borrower who has suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment merely because he or she was in default on the loan and was not a party to the challenged assignment.” (*Id.* at p. 924.) But the California Supreme Court said its holding was a narrow one. (*Ibid.*) “We do not

hold or suggest that a borrower may attempt to preempt a threatened nonjudicial foreclosure by a suit questioning the foreclosing party's right to proceed." (*Ibid.*)

Unlike the facts of *Yvanova*, *supra*, 62 Cal.4th 919, this case involves borrowers in default attempting to preempt a threatened nonjudicial foreclosure, precisely the question left open by *Yvanova*. But the question was answered by Division One of the Fourth Appellate District in *Saterbak*, *supra*, 245 Cal.App.4th at pages 814 to 815. In that case, the borrower sought to cancel the assignment of the deed of trust to her home after a notice of default and notice of trustee's sale had been recorded but before a sale occurred. The court explained: "California courts do not allow such preemptive suits because they 'would result in the impermissible interjection of the courts into a nonjudicial scheme enacted by the California Legislature.' [Citations.]" (*Id.* at pp. 814-815.) The court in *Saterbak* quoted from *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, which explained that requiring defendants to prove, prior to foreclosure, that they are authorized to initiate foreclosure is inconsistent with the policy behind nonjudicial foreclosure to provide a quick, inexpensive and efficient remedy. (*Saterbak*, *supra*, 245 Cal.App.4th at pp. 814-815; *Gomes*, *supra*, 192 Cal.App.4th at p. 1154, fn. 5; see also *Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, disapproved on another ground in *Yvanova*, *supra*, 62 Cal.4th at p. 939, fn. 13.)

As *Saterbak* observed, *Yvanova* did not alter standing for preforeclosure cases because *Yvanova*'s holding that a borrower has standing to sue for wrongful foreclosure based on an allegedly void assignment was "expressly limited to the post-foreclosure context." (*Saterbak*, *supra*, 245 Cal.App.4th at p. 815.) We agree with *Saterbak*. Because the Bronsons' action is preforeclosure, they do not have standing to preempt a threatened nonjudicial foreclosure by a suit questioning the foreclosing party's rights under an assigned note.

Several of the Bronsons' claims require standing to preempt a threatened nonjudicial foreclosure: the claims for quiet title (tenth cause of action), removal of

cloud on title (eleventh cause of action), injunction (thirteenth cause of action), and declaratory relief (fifteenth cause of action). The trial court properly adjudicated those claims against the Bronsons. For these purposes, we need not examine the difference between causes of action and remedies; for example, an injunction is a remedy, not a cause of action. (*City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293.) In addition, we need not determine whether, under *Yvanova, supra*, 62 Cal.4th 919, the Bronsons have successfully established that the transfer of the note was void, as opposed to voidable. Although *Yvanova* requires a void transfer to confer standing, *Saterbak, supra*, 245 Cal.App.4th 808 prohibits a preforeclosure challenge to the assignment of the note regardless of whether the alleged assignment was void or voidable. Accordingly, we do not reach the question in this case. (See *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 810-820 [holding that alleged assignment in that case was voidable].)

II

The Bronsons also contend the trial court erred by summarily adjudicating various causes of action. We address their argument for each such cause of action in turn.

A

Regarding their first cause of action for breach of contract, the Bronsons claim EMC violated the trial payment plan by failing to consider their loan modification request in good faith. The contention is without merit because the April 2009 agreement did not contain a promise regarding modification of the loan.

In the Bronsons' first cause of action, they alleged: "The TPP [trial payment plan] required that, in exchange for the payments therein provided for, Defendants would forbear from collection action against Plaintiffs and would consider, in good faith, Plaintiffs' request for a loan modification." The "TPP" in this allegation refers to the agreement entered into in April 2009 between EMC (as the loan servicer) and the Bronsons. In the agreement, the total amount past due on the loan was stated as

\$22,519.59, and EMC agreed not to pursue normal collections procedures if the Bronsons made monthly payments of \$7,081.63 in April, May, and June of 2009. The written agreement contained no mention of a loan modification.

The trial court granted summary adjudication of this breach of contract cause of action because EMC made no promise to consider a loan modification. The trial court further determined the Bronsons could not establish an oral agreement to consider a loan modification in connection with the April 2009 agreement because an oral agreement would violate the statute of frauds.

The Bronsons argue the trial court erred in making these determinations because the April 2009 agreement obligated the lender to offer a loan modification in good faith as a matter of federal law. They write: “The Court overlooked the fact that a TPP, *per se*, obligates a lender to offer a modification in good faith. Indeed, when a TPP is offered, the lender has already determined that the borrower has qualified for the modification.” For this proposition, the Bronsons cite *Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 924 (*Bushell*), in which this court held that if a lender offers a borrower a Trial Payment Plan under the federal Troubled Asset Relief Program (TARP), the lender has made a determination that the borrower qualifies for the federal Home Affordable Modification Program (HAMP), which includes loan modification. (*Ibid.*)

But the Bronsons alleged in their complaint that they “never were offered, nor have they ever had, a ‘HAMP’ TPP.” And, in any event, their \$1 million loan exceeded the maximum amount for HAMP eligibility. (See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 787 [stating HAMP eligibility criteria].) Moreover, the Bronsons assert in their appellants’ reply brief that they “do not contend” defendants “breached a federal obligation to modify their mortgage” under the HAMP and they “have never contended that their loan was governed by HAMP.”

Thus, although the Bronsons assert in their appellants' opening brief that the April 2009 agreement constituted a determination by the lender that they qualified for loan modification under the federal program, they assert in their reply brief that they never contended that the federal program applies to their situation.

Accordingly, defendants did not agree to consider a loan modification in the April 2009 agreement, and by the Bronsons' own admission, federal laws (concerning whether offering a trial payment plan constitutes a determination that the borrower is eligible for loan modification) do not apply to the Bronsons. Therefore, the trial court was correct in adjudicating the breach of contract cause of action against them.

For the first time in their reply brief, the Bronsons claim the trial court erred by determining that the statute of frauds precluded consideration of the alleged oral agreement to modify the loan. The Bronsons forfeited consideration of this assertion because they raised it for the first time in their reply brief. (See *Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, fn. 8 (*Neighbours*) [points raised in reply brief not considered unless good cause shown].)

B

The Bronsons next contend the trial court erred in summarily adjudicating the fourth cause of action for fraud by concealment against them. In the complaint, the Bronsons alleged that defendants concealed the fact that several documents relating to the assignment of the loan and substitution of trustee were falsified. The Bronsons claimed they relied on the falsified documents "by assuming, and forbearing to challenge or object to, the genuineness and validity of the subject documents; by continuing to pursue loan modification with EMC; and by continuing to make payments to EMC." The trial court summarily adjudicated the fraud by concealment cause of action against the Bronsons because defendants, who were not in a fiduciary relationship with the Bronsons, had no duty to disclose to the Bronsons the details of their assignment

agreement and substitution of trustees. We agree with the trial court that defendants had no duty to disclose the details of their agreements to the Bronsons.

A fraud by concealment cause of action includes the following elements: “ “(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. [Citation.]” [Citation.]’ [Citation.]” (*Kaldenbach v. Mutual of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830, 850.)

Quoting *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, the Bronsons now argue defendants “had a common law duty to avoid making partial, misleading representations that effectively concealed material facts.” (*Id.* at p. 250.) But the argument does not address the trial court’s ruling. In its order granting summary judgment, the trial court found *Boschma* inapposite because there is no fiduciary relationship between a lender and a borrower that would require the lender to disclose facts such as the details of an agreement between the lender and a party to whom the lender transfers a loan. We agree with the trial court that there is no such duty here. (See *Oaks Management Corporation v. Superior Court* (2006) 145 Cal.App.4th 453, 466 [absent special circumstances, no fiduciary relationship between lender and borrower].) Generally, “a financial institution owes no duty of care to a borrower when [its] involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money.” (*Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.)

In their reply brief, the Bronsons argue for the first time that there are exceptions to the rule that a lender does not owe a duty of care to a borrower. That argument is

forfeited for failure to raise it in the opening brief. (*Neighbours, supra*, 217 Cal.App.3d at p. 335, fn. 8.)

C

The Bronsons further contend the trial court erred by summarily adjudicating the sixth cause of action for intentional misrepresentation against them. In their complaint, the Bronsons identified the alleged intentional misrepresentation as EMC's representation that it intended to offer a loan modification in good faith. We conclude the trial court was correct in holding that the undisputed facts contradict the Bronsons' allegation of a misrepresentation.

The elements of an intentional misrepresentation cause of action are: "(1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages. [Citation.]" (*Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816.) Here, we find the first element is absent and therefore we need not discuss the remaining elements.

In the Bronsons' complaint, they alleged: "Plaintiffs are informed and believe, and on that basis allege, that on most or all of the occasions when EMC demanded more documents from Plaintiffs, represented that documents were missing, represented that Plaintiffs agree repeatedly to 'trial payment plans', and represented that Plaintiffs' application for a loan modification was being considered in good faith, EMC's representations were false, in that EMC did not intend to consider and offer Plaintiffs a loan modification in good faith." Thus, the alleged misrepresentation forming the basis of the cause of action is that EMC, in making its various demands of the Bronsons, did not intend to offer a loan modification in good faith. However, as the trial court noted, EMC actually offered a loan modification plan in May 2011, and there is no evidence that the offer was not made in good faith.

In finding no evidence of failure to offer a loan modification in good faith, the trial court wrote: "[D]efendants did offer a loan modification plan in the letter of May 27,

2011 requiring three payments of \$6,906 (which was actually less than the prior forbearance payments of \$7,081 or the final minimum adjusted payment of \$7,525 under the original loan's terms). [Record citations.] Further, while the plaintiffs claim that demanded payment was much higher than what they had been immediately paying (\$5,419) the August 22, 2011 letter they rely upon indicates a total monthly payment of \$7,268. [Record citations.] In any case, the plaintiffs only made one of the three payments." The trial court concluded: "The defendants clearly offered a loan modification with a resulting payment less than the original note"

The Bronsons now appear to argue that because the offered loan modification included payments they could not afford, there was some kind of intentional misrepresentation. But they provide no authority for such a proposition. They again cite *Bushell*, but in that case it was alleged the lender started foreclosure proceedings while the borrower was in compliance with a loan modification plan. (*Bushell, supra*, 220 Cal.App.4th at p. 930.) No such facts exist here. The Bronsons also cite to one other case, but only on the issue of damages, which we do not reach here.

We find no support in the record for the Bronsons' intentional misrepresentation cause of action.

D

Moreover, the Bronsons assert the trial court erred by summarily adjudicating the eighth cause of action for unfair business practices against them.

In their complaint, the Bronsons alleged defendants committed unfair business practices by "utilizing forged signatures, backdated documents and invalid assignments" In other words, they challenge the agreements to which they were not parties. As we have explained, they do not have standing to challenge those agreements. A borrower lacks standing to make a preforeclosure attack on any assignments made of their loan. Here, the Bronsons attempt to do just that: reach back into the agreements concerning the assignment of their promissory note, agreements to which the Bronsons

were not parties. Accordingly, they lack standing to maintain a preforeclosure action attacking those assignments.

In any event, the authority upon which they rely to support their unfair business practices cause of action is inapposite. In *Rufini v. CitiMortgage, Inc.* (2014) 227 Cal.App.4th 299, a borrower sued a lender following a failed loan modification and foreclosure, alleging various causes of action including unfair business practices. (*Id.* at pp. 302-303.) The trial court sustained demurrers without leave to amend as to all causes of action. The reviewing court affirmed in part and reversed in part. (*Id.* at p. 302.) Regarding Rufini's unfair business practices allegation against the lender, the court held that Rufini could state a cause of action under Business and Professions Code section 17200 based on allegations that the lender told him he was approved for a permanent loan modification and carried on the pretense of engaging in efforts to finalize it while planning to foreclose on the loan. (*Rufini, supra*, 227 Cal.App.4th at pp. 310-311.)

This case differs significantly from *Rufini* in two respects: (1) Rufini alleged unfair business practices in how the lender dealt with him, but the Bronsons alleged unfair business practices in how defendants dealt with each other, not the Bronsons; and (2) Rufini made all of the agreed-upon TPP payments, whereas the Bronsons did not. The Bronsons cannot establish that defendants negotiated a loan modification agreement without intending to comply with its terms because the Bronsons did not make the required payments as a condition of receiving the loan modification.

The trial court did not err in summarily adjudicating the eighth cause of action for unfair business practices because the Bronsons do not have standing to attack the assignments and because they did not comply with the loan modification agreement by making all the trial payments. We need not consider defendants' further argument that the Bronsons cannot establish that the Bronsons' economic harm resulted from defendants' conduct.

The Bronsons further assert defendants committed unfair business practices by violating a consent order and judgment entered in federal court against one of the defendants here, JPMorgan Chase Bank. This vague reference to a consent order and judgment and conclusory allegation that defendants' actions violated the consent order and judgment, without supporting authority, is insufficient to require further analysis. (*People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2 [claims perfunctorily raised are forfeited].)

E

In their appellants' opening brief, the Bronsons contend the trial court erred by summarily adjudicating the ninth cause of action for conversion against them because defendants did not give the Bronsons credit for payments made. However, in their reply brief, the Bronsons concede that the payments were acknowledged and credited to their account. We therefore need not address the conversion cause of action.

F

Finally, the Bronsons contend the trial court erred by summarily adjudicating the fourteenth cause of action for intentional infliction of emotional distress against them. The trial court determined there was insufficient evidence that defendants' conduct was extreme and outrageous. We conclude the Bronsons have failed to present an authoritative argument for reversal.

In making its ruling on the cause of action for intentional infliction of emotional distress, the trial court, after considering the law on that tort, wrote: "Here, the plaintiffs' facts are that they repeatedly provided documents and then [were] told the party (EMC) had not received them. The plaintiffs were then constantly referred to new points of contact. That the loan modification process took over two years and that the identity of the actual loaner of the home was hidden. [*Sic*] As a matter of law the court does not find this to be extreme and outrageous conduct. . . . The defendants may have been slow and there may [have] been a confusing array of representatives and they may have lost or

not been aware of plaintiffs' paperwork, but such behavior is not extreme and outrageous so as to 'exceed all bounds of decency in a civilized community' [quoting *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 204] particularly where the final outcome was an offer of a loan modification."

Rather than citing authority for the elements of a cause of action for intentional infliction of emotional distress and for the proposition that the conduct the Bronsons allege against defendants was sufficient to support such a claim, the Bronsons make a factual argument almost completely devoid of authority. This defect is fatal to the Bronsons' appellate contention.

It is established that an appellate brief should contain a legal argument with citation to authorities on the points made. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546.) If none is furnished on a particular point, the court may treat it as forfeited and pass it without consideration. (*Ibid.*)

The sole authority cited by the Bronsons for their contention pertaining to intentional infliction of emotional distress is *State Rubbish Collectors Assn v. Siliznoff* (1952) 38 Cal.2d 330, at pages 336 to 339. They cite it for the proposition that, in their words, "Appellants [are] not even required to show that Respondents' outrageous conduct caused any physical injury." That authority does not respond to the trial court's finding that defendants' conduct was not extreme or outrageous. Because the Bronsons provide no authority for whether defendants' conduct was extreme and outrageous, they forfeited this contention on appeal.

In any event, arms-length dealings between a borrower and lender are almost never sufficient to support a cause of action for intentional infliction of emotional distress. "To be outrageous, conduct must be 'so extreme as to exceed all bounds of that usually tolerated in a civilized community.' [Citation.]" (*Ross v. Creel Printing & Publishing Co., Inc.* (2002) 100 Cal.App.4th 736, 745.) "A party is not subject to liability for infliction of emotional distress when it has merely pursued its own economic

