

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PREETINDER K. HUNDAL
and NISHAN S. HUNDAL,

Plaintiffs-Appellants,

v.

EAGLE VISTA EQUITIES, LLC; et al.,

Defendants-Appellees.

No. 16-17371

D.C. No. 3:16-cv-01287-WHO

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William H. Orrick, District Judge, Presiding

Submitted February 15, 2018**
San Francisco, California

Before: SCHROEDER, TORRUELLA,*** and FRIEDLAND, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Juan R. Torruella, United States Circuit Judge for the First Circuit, sitting by designation.

Preetinder K. Hundal and Nishan S. Hundal (collectively, "the Hundals") defaulted on a deed of trust (the "DOT") that they had secured with their residence (the "Property"). The trustee on the DOT, PLM Loan Management Services, Inc. ("PLM") conducted a trustee sale, and Eagle Vista Equities, LLC ("Eagle Vista") purchased the Property. PLM ultimately distributed the proceeds of that sale between the DOT's beneficiary and the Hundals.

The Hundals sued PLM for wrongful foreclosure and sought to set aside Eagle Vista's trust deed to the Property. The district court dismissed the Hundals' claims, *see* Fed R. Civ. P. 12(b)(6), and they now appeal. We affirm.

1. The Hundals argue that PLM violated the obligations that the Fair Debt Collection Practices Act ("FDCPA") imposes on "debt collectors." *See* 15 U.S.C. § 1692. But, *Ho v. ReconTrust Company, NA*, 858 F.3d 568, 572-73 (9th Cir. 2016), forecloses that possibility. *Ho* established that foreclosure trustees do not fall under the FDCPA's general definition of "debt collectors" when they perform the foreclosure procedures provided by California law. *Id.* The district court, therefore, correctly concluded that PLM cannot be liable under the FDCPA as a general debt collector.

2. The Hundals next assert that PLM breached its obligations under the FDCPA as a "security enforcer." *Ho* did recognize that foreclosure trustees may be liable under 15 U.S.C. § 1692f(6), which, unlike the rest of the statute, also pertains to the

conduct of securities enforcers. 858 F.3d at 573; *see* 15 U.S.C. § 1692a(6). To succeed on this claim, the Hundals needed to plead facts supporting the reasonable inference that PLM lacked a present right to possess the Property. 15 U.S.C. § 1692f(6)(A); *see also* *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). They failed to do so.

The Hundals contend that while Bank of the West purported to appoint PLM as trustee, Bank of the West was actually not their lender, and was thus powerless to do so. But, the DOT shows that Bank of the West was indeed the lender. The Hundals also argue that PLM violated its alleged obligation under paragraph 17 of the DOT to provide notice before enforcing its security interest. But paragraph 17 of the DOT pertains only to the lender's obligation to provide notice. As a trustee, PLM did not need to provide any notice beyond that which California Civil Code sections 2924-2924k require. *See I.E. Assocs. v. Safeco Title Ins. Co.*, 702 P.2d 596, 600-01 (Cal. 1985) (holding that trustees have no common law duty to provide notice beyond that required by section 2924b); *Moeller v. Lien*, 25 Cal. App. 4th 822, 830, 834 (1994) (explaining that sections 2924-2924k provide "a comprehensive framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust" and describing that framework as "exhaustive"); *see also Vournas v. Fid. Nat'l Title Ins. Co.*, 73 Cal. App. 4th 668, 677 (1999) ("[A] trustee's only duties are: (1) upon default to undertake the steps necessary to

foreclose the deed of trust; or (2) upon satisfaction of the secured debt to reconvey the deed of trust."). Therefore, the district court correctly determined that the Hundals failed to state a claim that PLM violated 15 U.S.C. § 1692f(6)(A).

3. Nor did the district court err in holding that, for purposes of potential violations of state law, PLM's conduct was privileged. California Civil Code section 47 provides for various privileged publications and communications that cannot, absent malice, provide a basis for tort liability. *See Hagberg v. Cal. Fed. Bank FSB*, 81 P.3d 244, 249 (Cal. 2004) ("[T]he only tort claim we have identified as falling outside the privilege established by section 47(b) is malicious prosecution."). California Civil Code section 2924(d), in turn, specifies that the "mailing, publication, and delivery" of foreclosure notices, and the "[p]erformance" of foreclosure procedures are "privileged communications" within the meaning of section 47. *See also Flores v. EMC Mortg. Co.*, 997 F. Supp. 2d 1088, 1126 (E.D. Cal. 2014). Section 2924(b) creates further insulation, providing that a trustee "shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage."

The Hundals failed to plead sufficient facts to support an inference that PLM relied in bad faith on any incorrect accounting of the amount that the Hundals owed under the DOT. The district court noted that, following the trustee sale, PLM

remitted to the Hundals' lender more than twice the amount of money the Hundals originally owed under the DOT. Nonetheless, the district court correctly concluded that--particularly in light of the potential interest, late charges, legal fees, and foreclosure fees the Hundals may have owed their lender--this sum alone did not establish PLM's bad faith. The district court also correctly held that the Hundals had failed to adequately allege any other grounds for finding that PLM acted with malice for purposes of stripping its statutory privilege.

4. The district court likewise did not err in holding that the Hundals failed to sufficiently allege that they were entitled to have Eagle Vista's trust deed to the Property set aside. "[A]s a general rule, a trustor has no right to set aside a trustee's deed as against a bona fide purchaser for value by attacking the validity of the sale." *Moeller*, 25 Cal. App. 4th at 831. Even if the Hundals could plausibly allege that the foreclosure sale was invalid, they would still need to allege that Eagle Vista was not a bona fide purchaser ("BFP"). "[A] purchaser at foreclosure is a BFP if he or she (1) purchases the property in good faith and for value, and (2) has no knowledge or notice of the asserted rights claimed by another." *Melendrez v. D & I Inv., Inc.*, 127 Cal. App. 4th 1238, 1254 (2005). In dismissing this claim, the district court reasoned that "the Hundals [had] not plausibly established that PLM was not the validly appointed trustee" or identified "any other basis from which to plausibly infer that Eagle Vista is not entitled to BFP status." The district court is correct.

5. Though none of the Hundals' appellate arguments are meritorious, we decline PLM's invitation to award fees on the basis that the Hundals pursued this appeal in bad faith. Appellate sanctions are discretionary. *Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir. 1993). We do not find them appropriate here.

AFFIRMED.