FILED

AUG 4 2023

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LIONEL LIMA, Jr.; BARBARA-ANN DELIZO-LIMA, Plaintiffs-Appellants, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, Defendant-Appellee.	No. 21-16924 D.C. No. 1:12-cv-00509-SOM-WRP MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Susan O. Mollway, District Judge, Presiding

Submitted August 2, 2023**
San Francisco, California

Before: O'SCANNLAIN, SILVERMAN, and JOHNSTONE, Circuit Judges.

Lionel Lima, Jr., and Barbara-Ann Delizo-Lima appeal pro se from the district court's grant of summary judgment in favor of Deutsche Bank National Trust Co. on their claims of wrongful foreclosure and unfair or deceptive acts or

---

* 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).

practices (UDAP) in violation of Hawai‘i Revised Statutes § 480-2. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's grant of summary judgment, *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011), and review for abuse of discretion its denial of a motion for post-judgment relief, *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court correctly granted summary judgment because the Limas failed to establish a genuine issue of material fact as to whether they suffered harm—an element of their claims. *See Weinberg v. Whatcom County*, 241 F.3d 746, 751–52 (9th Cir. 2001) (holding that the district court did not err in granting summary judgment where the plaintiff failed to offer evidence of damages, an element of his tort claims). The district court correctly relied on the Hawai‘i Supreme Court's answer, to a certified question under Hawai‘i law, that a borrower with no pre-foreclosure rights in property except as encumbered by a mortgage bears the burden of accounting for the effect of the mortgage in establishing the element of harm for his wrongful foreclosure and UDAP claims. *See Lima v. Deutsche Bank Nat'l Trust Co.*, 494 P.3d 1190, 1193 (Haw. 2021). The Limas did not provide evidence of damages that, when offset by their mortgage debt, would establish the element of harm. *See id.* at 1202.

The district court did not abuse its discretion in denying the Limas' motions for post-judgment relief because they failed to provide grounds for relief under either Fed. R. Civ. P. 59(e) or Fed. R. Civ. P. 60(b). *See Sch. Dist. No. 1J*, 5 F.3d at 1262–63.

AFFIRMED.