

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 12 2015

FOR THE NINTH CIRCUIT

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

JEANETTE K. LANSBURG; LARRY J.
ENCINAS, husband and wife,

Plaintiffs - Appellants,

v.

FEDERAL HOME LOAN MORTGAGE
CORPORATION; SAXON MORTGAGE
SERVICES, INC.,

Defendants - Appellees.

No. 13-15545

D.C. No. 2:11-cv-01529-HRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
H. Russel Holland, Senior District Judge, Presiding

Submitted June 9, 2015**
San Francisco, California

Before: SILVERMAN, GOULD, and HURWITZ, Circuit Judges.

Jeanette K. Lansburg and Larry J. Encinas (“Plaintiffs”) appeal a summary judgment entered by the district court on their contract claims against Saxon

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

Mortgage Services, Inc. and the Federal Home Loan Mortgage Corporation. We have jurisdiction under 28 U.S.C. § 1291; we vacate and remand.

1. Plaintiffs contend that they entered into a Trial Period Plan (“TPP”) with Saxon’s predecessor-in-interest that promised an eventual permanent loan modification, that they complied with the terms of the TPP, but that Saxon nonetheless refused to permanently modify the loan and foreclosed on their home. The district court granted summary judgment to the defendants, finding that the TPP did “not guarantee that the lender will provide the borrower with a loan modification agreement even if the borrower” complied with its terms.

2. In *Corvello v. Wells Fargo Bank, NA*, which involved claims similar to those here, we held that a lender may be contractually obligated to offer a permanent loan modification if the borrower complies with the terms of a TPP. 728 F.3d 878, 883–85 (9th Cir. 2013). Because the district court did not have the benefit of our later opinion when it granted summary judgment in this case, we vacate the judgment and remand for reconsideration of plaintiffs’ claims in light of *Corvello*.

VACATED AND REMANDED; each party shall bear its own costs.