

**CERTIFIED FOR PUBLICATION**  
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE

SAN DIEGO WATERCRAFTS, INC.,

Plaintiff and Appellant,

v.

WELLS FARGO BANK, N.A., as Trustee,  
etc.,

Defendant and Respondent.

G025980  
(Consol. with G026841)

(Super. Ct. No. 789338)

ORDER MODIFYING OPINION;  
NO CHANGE IN JUDGMENT

It is ordered that the opinion filed herein on September 20, 2002, be modified in the following particular:

1. On page 7, beginning with the sentence “A construction permitting the court . . .,” delete the entire paragraph and the following paragraph in their entirety.

Replace those two paragraphs with the following:

“A construction permitting the court to disregard evidence not referenced in moving party’s separate statement recognizes the most efficient manner for trial judges to use these statements of undisputed facts in ruling on motions for summary judgment. When the moving party’s statement is laid side by side with the opposing party’s responsive separate statement, the court is directed to the specific evidence supporting

any facts alleged to be disputed. Using this process, the court need only review evidence pertaining to disputed facts; there is no need for it to review evidence supporting facts which are agreed to be undisputed nor evidence not referenced in the moving party's separate statement or in the opposing party's responsive statement, at least insofar as opposing party relies on facts which are claimed to be disputed. As *Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830, 842 explains, “‘That the fact *could have been found* in the filed documents is of no value, because this would have imposed on the trial court the impossible burden of determining both the existence and [the] significance of facts unmentioned by the parties.’ [Citation.]”

“We are not here deciding how the trial court should deal with undisputed evidence which may be submitted in opposition to the summary judgment motion. Possibly because of a legislative oversight, the statute requires the opposing party's separate statement to respond to the facts asserted in moving party's statement and to state “any other material facts which the opposing party contends are disputed.” (§ 437c, subd. (b).) In opposing the motion, a party may rely on facts which it contends are undisputed. If the opposing party relies on such facts in opposition to the motion, may the court disregard it because it is not included in the opposition statement of “disputed facts”? A clarification of this much amended statute seems required. But we leave that issue for another case.”

This modification does not effect a change in the judgment.

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RYLAARSDAM, J.

WE CONCUR:  
SILLS, P. J.  
BEDSWORTH, J.