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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TOM YOSHIKAZU and MARGARET LYNN)
BROOKS, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
PINNACLE FINANCIAL CORPORATION;)
STEWART TITLE OF NORTHERN NEVADA;)
NATIONAL DEFAULT SERVICING)
CORPORATION; SELECT PORTFOLIO)
SERVICING; LSI TITLE AGENCY-NV;)
MARK VOLPE; and DOES 1-25)
CORPORATIONS; DOES and ROES 1-25)
Individuals, Partnerships, or)
anyone claiming any interest to)
the property described in the)
action,)
)
Defendants.)
)
)

3:11-cv-00411-ECR-RAM

Order

Plaintiffs are homeowners alleging a predatory lending scheme by Defendants. Now pending are two motions to dismiss (##9, 19), a motion to expunge lis pendens (#11), a motion to supplement opposition (#17), and a motion to add indispensable party (#29).

I. Background

On October 16, 2006, Plaintiffs borrowed \$384,000.00 from lender Pinnacle Financial Corporation and secured the loan with a deed of trust on the property at 3746 Banfi Court, Sparks, Nevada (

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1 the "Subject Property"). (Doc. #3453603 Deed of Trust¹, Ex. A
2 (#10).) Stewart Title of Nevada is listed as the trustee on the
3 deed of trust. (Id.) On January 20, 2011, a corporate assignment of
4 deed of trust stated that the assignor, MERS, as nominee for
5 Pinnacle Financial Corporation, assigned the deed of trust to U.S.
6 Bank, N.A., as trustee, on behalf of the holders of the CSMC
7 mortgage-backed pass-through certificates at c/o Select Portfolio
8 Servicing, Inc. (Corporate Assignment of Deed of Trust (#20-4).) On
9 April 21, 2011, a substitution of trustee, dated January 14, 2011,
10 substituted National Default Servicing Corporation for Stewart Title
11 of Northern Nevada as the trustee. (Substitution of Trustee, Ex. C
12 (#10).) On January 20, 2011, National Default Servicing
13 Corporation, listed as the beneficiary, recorded a Notice of Default
14 and Election to Sell. (Notice of Default, Ex. D (#10).) A trustee's
15 sale was noticed for May 12, 2011. (Notice of Trustee's Sale, Ex. E
16 (#10).) A lis pendens was recorded on May 12, 2011. (Lis Pendens,
17 Ex. F (#10).)

18 On July 29, 2011, Defendants National Default Servicing
19 Corporation and Select Portfolio Servicing filed a "Motion to
20 Dismiss for Failure to State a Claim Upon Which Relief Can Be
21 Granted, Or In the Alternative Motion for Summary Judgment" (#9).
22 On August 15, 2011, Plaintiffs filed their opposition (#12). On
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24
25 ¹ Defendants request judicial notice of the deed of trust,
26 substitution of trustee, election to sell, and other such exhibits.
27 Under Federal Rule of Evidence 201, a court may judicially notice
28 matters of public record. Disabled Rights Action Comm. v. Las Vegas
Events, Inc., 375 F.3d 861, 866 n. 1 (9th Cir 2004). Therefore, we
take judicial notice of these public records.

1 August 23, 2011, Defendants National Default Servicing Corporation
2 and Select Portfolio Servicing filed their reply (#14).

3 On July 29, 2011, Defendants National Default Servicing
4 Corporation and Select Portfolio Servicing filed a "Motion to
5 Expunge Lis Pendens" (#11). On August 15, 2011, Plaintiffs filed
6 their opposition (#13). On August 24, 2011, Defendants National
7 Default Servicing Corporation and Select Portfolio Servicing replied
8 (#15).

9 On September 21, 2011, Plaintiffs filed a "Motion to Supplement
10 Opposition Motion to Dismiss" (#17).

11 On September 24, 2011, Defendant LSI Title Agency, Inc. filed a
12 "Motion of LSI Title Agency, Inc. to Dismiss Plaintiff's Complaint"
13 (#19). On October 12, 2011, Plaintiffs opposed (#22). On November
14 2, 2011, Defendant LSI Title Agency replied (#23). Defendants
15 National Default Servicing Corporation and Select Portfolio
16 Servicing joined (##21, 24) in LSI Title Agency, Inc.'s Motion to
17 Dismiss (#19).

18 On February 9, 2012, Plaintiff filed a "Motion to Add
19 Indispensable Party" (#29).

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21 **II. Motions to Dismiss (##9, 19)**

22 **A. Standard**

23 A motion to dismiss under Federal Rule of Civil Procedure
24 12(b)(6) will only be granted if the complaint fails to "state a
25 claim to relief that is plausible on its face." Bell Atl. Corp. v.
26 Twombly, 550 U.S. 544, 570 (2007); see also Ashcroft v. Iqbal, 129
27 S. Ct. 1937, 1953 (2009) (clarifying that Twombly applies to

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1 pleadings in "all civil actions"). On a motion to dismiss, except
2 where a heightened pleading standard applies, "we presum[e] that
3 general allegations embrace those specific facts that are necessary
4 to support the claim." Lujan v. Defenders of Wildlife, 504 U.S.
5 555, 561 (1992) (quoting Lujan v. Nat'l Wildlife Fed'n, 497 U.S.
6 871, 889 (1990)) (alteration in original); see also Erickson v.
7 Pardus, 551 U.S. 89, 93 (2007) (noting that "[s]pecific facts are
8 not necessary; the statement need only give the defendant fair
9 notice of what the . . . claim is and the grounds upon which it
10 rests.") (internal quotation marks omitted). Moreover, "[a]ll
11 allegations of material fact in the complaint are taken as true and
12 construed in the light most favorable to the non-moving party." In
13 re Stac Elecs. Sec. Litig., 89 F.3d 1399, 1403 (9th Cir. 1996)
14 (citation omitted).

15 Although courts generally assume the facts alleged are true,
16 courts do not "assume the truth of legal conclusions merely because
17 they are cast in the form of factual allegations." W. Mining
18 Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Accordingly,
19 "[c]onclusory allegations and unwarranted inferences are
20 insufficient to defeat a motion to dismiss." In re Stac Elecs., 89
21 F.3d at 1403 (citation omitted).

22 Review on a motion pursuant to Fed. R. Civ. P. 12(b)(6) is
23 normally limited to the complaint itself. See Lee v. City of L.A.,
24 250 F.3d 668, 688 (9th Cir. 2001). If the district court relies on
25 materials outside the pleadings in making its ruling, it must treat
26 the motion to dismiss as one for summary judgment and give the non-
27 moving party an opportunity to respond. FED. R. CIV. P. 12(d);

1 see United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003). “A
2 court may, however, consider certain materials – documents attached
3 to the complaint, documents incorporated by reference in the
4 complaint, or matters of judicial notice – without converting the
5 motion to dismiss into a motion for summary judgment.” Ritchie, 342
6 F.3d at 908.

7 If documents are physically attached to the complaint, then a
8 court may consider them if their “authenticity is not contested” and
9 “the plaintiff’s complaint necessarily relies on them.” Lee, 250
10 F.3d at 688 (citation, internal quotations, and ellipsis omitted).
11 A court may also treat certain documents as incorporated by
12 reference into the plaintiff’s complaint if the complaint “refers
13 extensively to the document or the document forms the basis of the
14 plaintiff’s claim.” Ritchie, 342 F.3d at 908. Finally, if
15 adjudicative facts or matters of public record meet the requirements
16 of Fed. R. Evid. 201, a court may judicially notice them in deciding
17 a motion to dismiss. Id. at 909; see FED. R. EVID. 201(b) (“A
18 judicially noticed fact must be one not subject to reasonable
19 dispute in that it is either (1) generally known within the
20 territorial jurisdiction of the trial court or (2) capable of
21 accurate and ready determination by resort to sources whose accuracy
22 cannot reasonably be questioned.”).

23 **B. Discussion**

24 Because the two Motions to Dismiss (##9, 19) make similar
25 arguments with respect to each of Plaintiffs’ claims, the Court will
26 address the arguments together.

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1 1. First Cause of Action for Debt Collection Violations

2 Plaintiffs' first cause of action alleges that Defendants
3 violated Nevada Revised Statute 649.370, which provides that any
4 violation of the Federal Fair Debt Collection Practice Act ("FDCPA")
5 is a violation of Nevada law. Plaintiffs' claim fails as a matter
6 of law because foreclosure pursuant to a deed of trust does not
7 constitute debt collection under the FDCPA. Camacho-Villa v. Great
8 W. Home Loans, No. 3:10-cv-00210, 2011 WL 1103681 at *4 (D. Nev.
9 Mar. 23, 2011). Therefore, Plaintiffs' first claim must be
10 dismissed without leave to amend.

11 2. Second Cause of Action for Violation of Unfair and
12 Deceptive Trade Practices Act

13 Plaintiffs' second cause of action for violation of the Nevada
14 Unfair and Deceptive Trade Practices Act, Nev. Rev. Stat. §
15 598.0923, also fails as a matter of law. The statute provides that
16 a person engages in deceptive trade practices when he or she
17 knowingly conducts his or her business or occupation without all
18 required state, county, or city licenses. NEV. REV. STAT. §
19 598.0923(1). However, the statutes explicitly state that the
20 following activities do not constitute doing business in Nevada: (1)
21 maintaining, defending or settling any proceeding; (2) creating or
22 acquiring indebtedness, mortgages and security interests in real or
23 personal property; and (3) securing or collecting debts or enforcing
24 mortgages and security interests in property securing the debts.
25 NEV. REV. STAT. § 80.015(1)(a), (g), (h). Because Defendants are
26 explicitly exempted from the need to acquire licenses, the Court
27 dismisses Plaintiffs' second cause of action without leave to amend.

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1 3. Third Cause of Action for Violation of Unfair Lending
2 Practices, Nev. Rev. Stat. § 598D.100

3 Plaintiffs' third cause of action for unfair lending practices
4 in violation of Nev. Rev. Stat. § 598D is time-barred. The statute
5 of limitations for "[a]n action upon a liability created by statute"
6 is three years. NEV. REV. STAT. § 11.190(3)(a). Plaintiffs obtained
7 the loan at issue in October 2006, and filed this action in May
8 2011. Plaintiffs' claim for unfair lending practices is therefore
9 untimely and must be dismissed without leave to amend.

10 4. Fourth Cause of Action for Violation of the Covenant of
11 Good Faith and Fair Dealing

12 Plaintiffs' fourth claim also fails. Pursuant to Nevada law,
13 "[e]very contract imposes upon each party a duty of good faith and
14 fair dealing in its performance and execution." A.C. Shaw Constr.
15 v. Washoe Cty., 784 P.2d 9, 9 (Nev. 1989) (quoting Restatement
16 (Second) of Contracts § 205). This duty requires each party not to
17 do anything to destroy or otherwise injure the rights of the other
18 to receive the benefits of the contract. Hilton Hotels Corp. v.
19 Butch Lewis Prods., Inc., 808 P.2d 919, 923 (Nev. 1991). To prevail
20 on a cause of action for breach of the implied covenant of good
21 faith and fair dealing, a plaintiff must show: (i) the plaintiff and
22 defendants were parties to a contract; (ii) the defendant owed
23 plaintiff a duty of good faith and fair dealing; (iii) the defendant
24 breached the duty by performing in a manner unfaithful to the
25 purpose of the contract; and (iv) the plaintiff's justified
26 expectations were denied. Fitzgerald, 2011 WL 2633502 at *6 (citing
27 Perry v. Jordan, 900 P.2d 335, 338 (Nev. 1995)).

1 Plaintiffs make undifferentiated claims that all Defendants
2 breached the implied covenant by "luring" Plaintiffs into the loan,
3 collecting on the loan, sending Plaintiffs notices related to the
4 loan, and qualifying them for the loan. (Compl. ¶78 (#6).)
5 Plaintiffs further allege that Defendants breached the covenant when
6 they "offered the Plaintiffs consideration for loan modifications,
7 told them that the foreclosures would be postponed but they were
8 not." (Id. at ¶ 80.) Plaintiffs have failed, however, to allege a
9 single fact that would establish that the manner in which Defendants
10 complied with the contracts at issue contravened the intention or
11 spirit of the contracts. Plaintiffs' claim for breach of the
12 implied covenant of good faith and fair dealing will therefore be
13 dismissed.

14 5. Fifth Cause of Action for Violation of Nev. Rev. Stat.
15 § 107.080 et seq.

16 Plaintiffs' fifth cause of action, violation of Nev. Rev. Stat.
17 § 107.080 et seq., appears to allege that Defendants foreclosed
18 without authority to do so under Nev. Rev. Stat. § 107.080, which we
19 construe to be a claim for wrongful foreclosure based on violation
20 of state recording and foreclosure statutes. Specifically,
21 Plaintiffs allege that Defendants had no right to foreclose because
22 they have not produced the original note to prove the identity of
23 the real party in interest.

24 In general:

25 [W]rongful foreclosure will lie if the trustor or mortgagor
26 can establish that at the time the power of sale was
27 exercised or the foreclosure occurred, no breach of
28 condition or failure of performance existed on the

1 mortgagor's or trustor's part which would have authorized
2 the foreclosure or exercise of the power of sale.
3 Collins v. Union Fed. Sav. & Loan Ass'n, 662 P.2d 610, 623 (Nev.
4 1983); see also Cervantes, 656 F.3d at 1044 (plaintiffs cannot state
5 a claim for wrongful foreclosure while in default). "Even if MERS
6 were a sham beneficiary, the lenders would still be entitled to
7 repayment of the loans and would be the proper parties to initiate
8 foreclosure after the plaintiffs defaulted on their loans."
9 Cervantes, 656 F.3d at 1044. Because Plaintiffs do not dispute that
10 they are in default, Plaintiffs have not satisfied the requirements
11 for bringing a general claim for wrongful foreclosure.

12 Nevada Revised Statutes § 107.080 provides that the power of
13 sale in real property may not be exercised until:

14 The beneficiary, the successor in interest of the
15 beneficiary or the trustee first executes and causes to be
16 recorded in the office of the recorder of the county
17 wherein the trust property, or some part thereof, is
18 situated a notice of the breach and of the election to
19 sell or cause to be sold the property to satisfy the
20 obligation.

21 NEV. REV. STAT. § 107.080 2(c). The "Notice of Default and Election to
22 Sell Under Deed of Trust" was signed by National Default Servicing
23 Corporation, as agent for Select Portfolio Servicing. (Notice of
24 Sale (#20-3).) National Default Servicing Corporation was
25 substituted as the foreclosure trustee. (Substitution of Trustee,
26 (#20-5).)

27 In Karl v. Quality Loan Service Corp., this district noted that
28 Quality was neither the trustee nor the beneficiary when it recorded
the notice of default, but claimed on the notice of default to be
the agent for the beneficiary. 759 F.Supp.2d 1240, 1246 (D. Nev.

1 2010). The court in Karl stated that “[a]lthough MERS is not a
2 beneficiary, its agency for the beneficiary under the [deed of
3 trust] extends to administering the [deed of trust] for purposes of
4 foreclosure.” Id. The court further stated that:

5 [T]here is no defect in foreclosure here under section
6 107.080(2)(c), as there is in cases where a purported
7 trustee who is named nowhere on the [deed of trust], and
8 for whom evidence of substitution as trustee appears
9 nowhere, files a [notice of default]. . . . There is no
question of fact that [Quality] filed the [notice of
default] as the agent of MERS, who was the agent of the
beneficiary UAMC, and the foreclosure was therefore not
improper under section 107.080(2)(c).

10 Id. No party on whose behalf agency was claimed has come forth
11 disputing that fact.

12 In Cervantes v. Countrywide Home Loans, Inc., the Ninth Circuit
13 considered wrongful foreclosure claims based on alleged procedural
14 defects. 656 F.3d 1034, 1044 (9th Cir. 2011).² The Ninth Circuit
15 held that “[e]ven if we were to accept the plaintiffs’ premises that
16 MERS is a sham beneficiary and the note is split from the deed, we
17 would reject the plaintiffs’ conclusion that, as a necessary
18 consequence, no party has the power to foreclose.” Id. Plaintiffs’
19 arguments that Nevada’s foreclosure statutes were violated by the
20 facts that the note was never presented, the note was split from the
21 deed, and other similar arguments have been repeatedly rejected in
22 this Court, and shall be dismissed without leave to amend.³

23
24 ² The Ninth Circuit case reviewed a case brought under Arizona
25 law. The conclusions of the Ninth Circuit, however, are equally
applicable under Nevada law.

26 ³ To the extent that Plaintiffs’ claim is not a wrongful
27 foreclosure claim, Plaintiffs have failed to state a claim upon which
28 relief may be granted. “NRS 107.080 does not provide plaintiff
homeowners with a private right of action for tort damages.” Berilo

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6. Sixth Cause of Action to Quiet Title

Plaintiffs' sixth cause of action is for quiet title. In Nevada, a quiet title action may be brought "by any person against another whom claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." NEV. REV. STAT. § 40.010. "In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself." Breliant v. Preferred Equities Corp., 918 P.2d 314, 318 (Nev. 1996). "Additionally, an action to quiet title requires a plaintiff to allege that she has paid any debt owed on the property." Lalwani v. Wells Fargo Bank, N.A., No. 2-11-cv-00084, 2011 WL 4574388 at *3 (D. Nev. Sep. 30, 2011) (citing Ferguson v. Avelo Mortg., LLC, No. B223447, 2011 WL 2139143 at *2 (Cal. App. 2d June 1, 2011)). Plaintiffs have failed to allege that they are not in breach of the loan agreement. While Plaintiffs do not expressly admit to being in default on the loan, the complaint, read as a whole, and taking all allegations in favor of Plaintiffs, does not show even the barest hint of a dispute over whether Plaintiffs were in default. Rather, Plaintiffs are challenging the procedure with which foreclosure was initiated against them, not that the loan was not in default. Accordingly, the quiet title claim must be dismissed without leave to amend.

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v. HSBC Mortg. Corp., USA, No. 2:09-cv-02353-RLH-PAL, 2010 WL 2667218, at *3 (D. Nev. June 29, 2010).

1 7. Seventh Cause of Action for Fraud in the Inducement and
2 Through Omission

3 Plaintiffs claim that Defendants committed fraud in the
4 inducement by luring Plaintiffs into the loan under false pretenses,
5 that is, by declaring them qualified for the loan based upon future
6 equity in the home and not from income or other assets. In order to
7 state a claim for fraud in the inducement, a plaintiff must show
8 that the defendant knowingly made a false representation with the
9 intent to induce the plaintiff to consent to the contract's
10 formation. J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.,
11 89 P.3d 1009, 1017 (Nev. 2004).

12 Defendants were under no obligation to disclose the risks of
13 the loan and whether Plaintiffs could afford it:

14 Although the Nevada Supreme Court has not ruled on the
15 issue, this Court and the Ninth Circuit Court of Appeals
16 have predicted that the Nevada Supreme Court would hold
17 that a lender does not owe a fiduciary duty, as "an arms-
18 length lender-borrower relationship is not fiduciary in
19 nature, absent exceptional circumstances."
20 Megino v. Linear Financial, No. 2:09-CV-00370, 2011 WL 53086 at *5
21 (D. Nev. Jan. 6, 2011) (quoting Yerington Ford, Inc. v. Gen. Motors
22 Acceptance Corp., 359 F.Supp.2d 1075, 1090 (D.Nev. 2004), overruled
23 on other grounds by Giles v. Gen. Motors Acceptance Corp., 494 F.3d
24 865 (9th Cir. 2007)); see also Renteria v. United States, 452
25 F.Supp.2d 910, 922-23 (D. Ariz. 2006) (holding that borrowers cannot
26 establish the reliance element of their claim because lenders have
27 no duty to determine the borrower's ability to repay the loan); Oaks
28 Mgmt. Corp. v. Superior Court of San Diego Cty., 51 Cal. Rptr. 3d
561, 570 ("[A]bsent special circumstances . . . a loan transaction

1 is at arms-length and there is no fiduciary relationship between the
2 borrower and the lender.”) (citations omitted).

3 Furthermore, a party alleging fraud “must state precisely the
4 time, place, and nature of the misleading statements,
5 misrepresentations, and specific acts of fraud.” Kaplan v. Rose, 49
6 F.3d 1363, 1370 (9th Cir. 1994). Because a claim for fraud in the
7 inducement cannot depend upon Plaintiffs’ bare allegations,
8 Plaintiffs’ claim for fraud in the inducement must be dismissed.
9 Nor have Plaintiffs shown that there are any facts upon which a
10 proper fraud claim may be brought against Defendants, and therefore,
11 Plaintiffs shall not be granted leave to amend this claim.

12 Plaintiffs also allege fraud by omission. Under Nevada law, a
13 claim for fraudulent concealment must plead that defendant concealed
14 or suppressed a material fact that he or she was under a duty to
15 disclose to the plaintiff. Nev. Power Co. v. Monsanto Co., 891 F.
16 Supp. 1406, 1415 (D. Nev. 1995) (citing Nevada Jury Instruction
17 9.03). Like many of Plaintiffs’ claims, this claim fails on its
18 face because it is well-settled that lenders and servicers owe no
19 fiduciary duties to mortgage borrowers. Megino, 2011 WL 53086 at *5
20 (quoting Yerington Ford, 359 F.Supp.2d at 1090, overruled on other
21 grounds by Giles, 494 F.3d 865; see also Kwok v. Recontrust Co., No.
22 2:09-cv-02298, 2010 WL 255615, at *5 (D. Nev. June 23, 2010); Saniel
23 v. Recontrust Co., No. 2:09-cv-2290, 2010 WL 2555625, at *5 (D. Nev.
24 June 23, 2010); Renteria, 452 F.Supp.2d at 922-23 (holding that
25 borrowers cannot establish the reliance element of their claim
26 because lenders have no duty to determine the borrower’s ability to
27 repay the loan); Oaks Mgmt. Corp, 51 Cal. Rptr. 3d at 570.

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1 Plaintiffs' allegations in support of these claims are vague
2 and conclusory, asserting only that Defendants failed to disclose
3 certain facts about the inner workings of the mortgage industry,
4 that Plaintiffs were not qualified for the loans, and that
5 Defendants had no right to foreclose on Plaintiffs' property.
6 Moreover, Plaintiffs cannot show that Defendants owed them a duty to
7 disclose these alleged facts. For this reason, Plaintiffs' claim
8 for fraud through omission must be dismissed without leave to amend.

9 8. Eighth Cause of Action for Slander of Title

10 Plaintiffs' eighth cause of action is slander of title.
11 Plaintiffs assert that Defendants "disparaged the title to the
12 Plaintiffs' property pursuant to recording Notices of Default that
13 were defective" because Defendants did not have the authority to
14 record those notices, and did not serve those notices upon
15 Plaintiffs. (Compl. ¶ 143 (#6).)

16 To succeed on a slander of title claim, a plaintiff must show
17 "false and malicious communications, disparaging to one's title in
18 land, and causing special damages." Exec. Mgmt., Ltd. v. Ticor
19 Title Co., 963 P.2d 465, 478 (Nev. 1998). However, Plaintiffs have
20 failed to state a claim because it is undisputed that Plaintiff is
21 in default. See Sexton v. IndyMac Bank FSB, No. 3:11-cv-437, 2011
22 WL 4809640, at *5 (D. Nev. Oct. 7, 2011); Ramos v. Mortg. Elec.
23 Registrations Sys., Inc., No. 2:08-CV-1089, 2009 WL 5651132, at *4
24 (D. Nev. Mar. 5, 2009) (dismissing slander of title claim where
25 Plaintiffs failed to dispute that they were in default on their
26 loan, nor was it false that the property was to be sold at a
27 trustee's sale). In filing the Notice of Default, Defendants stated

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1 that Plaintiffs were in breach of the loan agreement due to
2 nonpayment. Plaintiffs do not dispute that they are in fact in
3 default. Because the statement is not false, Defendants cannot be
4 liable for slander of title. Leave to amend to include a slander of
5 title claim will therefore be denied as futile.

6 9. Ninth Cause of Action for Abuse of Process

7 Plaintiffs' claim for abuse of process fails as a matter of law
8 because non-judicial foreclosure is not the type of "process"
9 addressed by the abuse of process tort as it does not involve
10 judicial action. Riley v. Greenpoint Mortg. Funding, Inc., No.
11 2:10-cv-01873, 2011 WL 1979831 at *5 (D. Nev. May 20, 2011); see
12 also Barlow v. BNC Mortg., Inc., No. 3:11-CV-0304, 2011 WL 4402955
13 at *4 (D. Nev. Sept. 21, 2011) ("[T]he process at issue in this
14 action is a non-judicial foreclosure which is not the characteristic
15 legal action contemplated by an abuse of process claim . . .
16 Therefore, the court finds that [Plaintiff] has failed to state a
17 claim for abuse of process.") (citation omitted). Accordingly,
18 Plaintiffs' claim for abuse of process shall be dismissed without
19 leave to amend.

20
21 **III. Motion (#17) to Supplement Opposition to Motion to Dismiss**

22 Plaintiffs filed a Motion (#17) to Supplement their Opposition,
23 in order to bring to the Court's attention recent Nevada Supreme
24 Court decisions pertaining to foreclosure. No opposition was filed
25 to the Motion (#17), and the Court, having considered the arguments
26 contained in the supplement, grants the Motion (#17).

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IV. Motion to Expunge Lis Pendens

Because all of Plaintiffs' claims have been dismissed without leave to amend, Defendants' Motion to Expunge Lis Pendens (#11) shall be granted.

V. Motion to Add Indispensable Party

In light of the dismissal of Plaintiffs' complaint, Plaintiffs' Motion to Add Indispensable Party (#29) shall be denied as moot.

VI. Conclusion

IT IS, THEREFORE, HEREBY ORDERED that Plaintiffs' Motion (#17) to Supplement the Opposition is **GRANTED**.

IT IS FURTHER ORDERED that the Motions to Dismiss (##9, 19) are **GRANTED**. Plaintiffs' claims are **DISMISSED WITH PREJUDICE** against all Defendants.

IT IS FURTHER ORDERED that the Motion to Expunge Lis Pendens (#11) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Add Indispensable Party (#17) is **DENIED** as moot.

The Clerk shall enter judgment accordingly.

DATED: March 26, 2012.


UNITED STATES DISTRICT JUDGE