12-18-2014

Countrywide Home Loans, Inc. v. Sheets Respondent's Brief Dckt. 42063

IN THE SUPREME COURT OF THE STATE OF IDAHO

COUNTRYWIDE HOME LOANS, INC.,

Plaintiff-Respondent,

vs.

RALPH E. SHEETS, JR. AND DEBRA SHEETS; and Does 1-10,

Defendants-Appellants,

vs.

Bank of America, N.A., successor by merger and name change to BAC Home Loans, Inc., f/k/a Countrywide Home Loans, Inc., and BAC Home Loan Servicing, L.P., f/k/a Countrywide Home Loan Servicing, LP; and ReconTrust Company, N.A.

Third Party Defendants-Respondents.

RESPONDENTS' BRIEF

Supreme Court Docket No. 42063-2014

Appeal from the District Court of the Third Judicial District for Adams County.
Honorable Bradly S. Ford, District Judge presiding.
Adams County District Court Docket No. CV-2010-2564

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I. STATEMENT OF THE CASE

This case concerns a dispute over a mistakenly released deed of trust securing a residential mortgage loan between Appellant Ralph Sheets, Jr. ("Mr. Sheets"), his lender, Countrywide Home Loans, Inc., n/k/a Bank of America, N.A. ("Countrywide"), the servicer of his loan, BAC Home Loan Servicing, L.P., n/k/a Bank of America, N.A. ("Bank of America"), and the trustee who executed the reconveyance, ReconTrust Company, N.A. ("ReconTrust") (all collectively, "Countrywide").[1] Mr. Sheet's wife, Debra Sheets ("Ms. Sheets" and collectively with Mr. Sheets, "Appellants") is not a borrower on the loan but signed the deed of trust securing the subject loan and was therefore a necessary defendant in the action. No payments have been made on the loan since October 2009. Appellants bring this appeal in furtherance of their efforts to leverage a simple and easily-remedied mistake by Countrywide into an avoidance of the mortgage debt.

It is undisputed that the deed of trust was mistakenly released after Mr. Sheets applied to refinance the subject loan in 2009. Mr. Sheets' loan application sought funding in the amount of $87,500 at an interest rate of 5.125%. For reasons unknown to the parties, Mr. Sheets thought he

[1] Appellants brought counterclaims against Countrywide, as well as third party claims against Bank of America, N.A., as successor by merger and name change to BAC Home Loans, Inc., f/k/a Countrywide Home Loans, Inc. (the Plaintiff in this action), and BAC Home Loan Servicing, L.P., f/k/a Countrywide Home Loan Servicing, LP (the servicer of Mr. Sheets' loan). Appellants also sued ReconTrust Company, N.A., the trustee who executed the mistaken reconveyance. All of the aforementioned parties will be referred to collectively herein as "Countrywide."

was being funded for a $108,000 loan at some interest rate less than 5.125%, but Countrywide had only agreed to loan $87,500 at 5.125%. The refinance never closed. Following the failed refinance, on November 9, 2009, a reconveyance was recorded releasing the deed of trust. Countrywide did not intend for the deed of trust to be reconveyed because the mortgage loan had not been paid in full. It is undisputed that Mr. Sheets has not paid off the subject loan. In fact, Mr. Sheets admits that he has not made a payment in over five years. Based on these facts, the District Court granted Countrywide's request for an order declaring the mistakenly recorded reconveyance to be void.

The instant appeal presents a straightforward question – did the District Court correctly find that the erroneously recorded deed of reconveyance should be declared void where (1) the plain language of the security instrument expressly states that it would not be released until the loan was paid in full; and (2) it is undisputed that the loan was not paid in full. The answer is unquestionably yes, for a number of reasons – most importantly, because Appellants have failed to identify any error or fact or of law by the District Court, or any abuse of discretion, sufficient to justify a reversal of its order granting summary judgment on Countrywide's claim.

Appellant's argument that the District Court lacked authority to issue a declaratory judgment is similarly unavailing. Under the liberal pleading standards of Rule 8, the specific label affixed to a cause of action is immaterial. A complaint need only contain a concise statement of the facts constituting the cause of action and a demand for relief. Countrywide's complaint asking that the reconveyance "be declared null and void," because it was mistakenly

recorded without the debt being paid in full, satisfied this standard and gave Appellants full and fair notice of the substance of Countrywide's claim. Accordingly, it makes no difference that Countrywide called its claim one for "rescission" rather than expressly pleading a claim for "declaratory judgment."

Appellants also attack the ruling based on the argument that the District Court improperly considered two affidavits submitted by Countrywide in support of its summary judgment motion. This argument fails for multiple reasons, most significantly, because Appellants identify this issue for appeal but the substance of their brief does not contain any argument or citation to legal authority in support of their position. This is plainly insufficient to show the abuse of discretion necessary to overturn the District Court's denial of Appellants' motions to strike.

Furthermore, the District Court properly found that Appellants failed to prove any defense which would preclude the relief sought by Countywide. Appellants' appeal brief, like their opposition to Countrywide's summary judgment motion, is heavy on hyperbole and conspiracy theories regarding the failed refinance. But despite their best efforts to distract from the real controversy in issue, the circumstances leading up to and surrounding the failed refinance are irrelevant to the question of whether summary judgment was properly granted on Countrywide's claim. Even if Appellants could support their equitable defenses with credible evidence, these events simply have no bearing on Countrywide's entitlement to reinstatement of the deed of trust.

Likewise, Appellants have failed to identify any error by the District Court in dismissing Appellants' counterclaims. As discussed below, summary judgment dismissing Appellants' counterclaims for breach of contract and specific performance was appropriate because Appellants failed to meet their burden of proving facts sufficient to establish the core element of these claims – the existence of an enforceable agreement to refinance Mr. Sheet's loan for $108,000 at an interest rate less than 5.125%. Dismissal of Ms. Sheet's claims is doubly warranted because she did not apply to refinance the subject loan and therefore has no standing to pursue such claims. Appellants are silent regarding dismissal of their remaining claims for slander of credit and alleged violations of the federal Fair Credit Reporting Act ("FCRA"), the Idaho Consumer Protection Act, and Idaho Code § 45-1502. Appellants therefore concede that dismissal of these claims was proper.[2]

[2] Dismissal of Appellants' claims for violation of the FCRA, the Idaho Consumer Protection Act, and slander of credit was proper for multiple reasons. Substantively, Appellants' claim under FCRA fails because Appellants did not prove that they disputed the alleged credit reporting through a credit reporting agency, which is an essential prerequisite to their claim. Appellants' state law claims for slander of credit and violation of the Idaho Consumer Protection Act fail because such claims are preempted by the FCRA. Further, Appellants failed to demonstrate any false credit statements which caused them damage, and they have failed to identify any actionable deceptive business practices. Finally, their claim under Idaho Code § 45-1502 fails because it is based on the mistaken presumption that MERS and ReconTrust are the same entity.

Each of these claims fails for the independent procedural reason that Appellants did not respond to any of the above arguments in response to Countrywide's summary judgment motion, thereby conceding the claims were subject to dismissal and failing to preserve any contrary arguments for appeal.

For all these reasons and the additional reasons discussed below, including that Appellants have failed to preserve and/or adequately present many of the issues they have presented for review, the District Court's order granting summary judgment to Countrywide and dismissing Appellants' counterclaims should be upheld.

II. STATEMENT OF FACTS

1. On or about December 21, 2004, Defendant Ralph Sheets borrowed $65,250.00 from Countrywide Home Loans, Inc., d/b/a America's Wholesale Lender. R. Vol. I, p. 11, ¶ 6; R. Vol. I, p. 14-15; *admitted at* R. Vol. I, p. 112, ¶ 6; R. Vol. I, p. 117, ¶ 9. This is referred to herein as the "Mortgage Loan".

2. In order to borrow the money, Mr. Sheets executed a Deed of Trust securing property commonly known as 5603 Highway 95, New Meadows, Idaho, 83654 (the "Property"). R. Vol. I, p. 11, ¶ 6; R. Vol. I, p. 16-27; *admitted at* R. Vol. I, p. 112, ¶ 6; R. Vol. IV, p. 637, L. 14:8-13; R. Vol. IV, p. 673-683. The Deed of Trust was recorded on December 28, 2004 as Instrument No. 107860.

3. Defendant Debra Sheets did not execute the Note and was not a borrower on the Mortgage Loan. R. Vol. IV, p. 636, L. 13:18-22.

4. Mrs. Sheets' sole interest in the Property is derived from her community property rights as the wife of Mr. Sheets. R. Vol. IV, p. 636, L. 13:25-14:1; R. Vol. IV, p. 637, L. 15:13-16.

5. In the Note, Mr. Sheets promised to repay the Mortgage Loan by making monthly payments of principal and interest in the amount of $563.92 beginning February 1, 2005 and

continuing each month thereafter until paid in full upon the maturity date, January 1, 2020. R. Vol. I, p. 14, ¶ 3.

6. In the Note, Mr. Sheets agreed that "[e]ven if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time." R. Vol. I, p. 15, ¶ 6(D).

7. In the Deed of Trust, Mr. and Mrs. Sheets agreed, "[n]o offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument." R. Vol. I, p. 18, last sentence of ¶ 1.

8. In the Deed of Trust, Mr. and Mrs. Sheets agreed, "[e]xtension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower." R. Vol. I, p. 24, ¶ 12.

9. Mr. Sheets has not paid back the $65,250.00 he borrowed. R. Vol. IV, p. 637, L. 15:17-21; R. Vol. I, p. 144, ¶ 9 *referencing* Affidavit of Ronald Odeyemi at ¶ 6[3].

10. Mr. Sheets has not made a regularly scheduled monthly payment since October 30, 2009, which brought the account current for the payment due November 1, 2009. R. Vol. IV, p.

[3] The supporting affidavit of Ronald Odeyemi was not included in the record on appeal. The primary basis of Appellants' appeal is that the evidence supporting Countrywide's motion for summary judgment was insufficient, including the Odeyemi affidavit. Having failed to include the affidavit in the record on appeal, Appellants' have not sufficiently presented the argument for consideration by this Honorable Court.

637, L. 15:25 -16:4; R. Vol. IV, p. 657, L. 71:9-23; R. Vol. I, p. 120, ¶ 17; R. Vol. I, p. 144, ¶ 10 *referencing* Affidavit of Ronald Odeyemi at ¶ 7; R. Vol. I, p. 174, Response to Interrogatory No. 20.

11. Mr. Sheets was unable to make a payment online in November 2009 because the Mortgage Loan did not appear on his online account. R. Vol. IV, p. 638, L. 18:13-22; R. Vol. IV, p. 648, L. 60:20-61:8.

12. Thereafter, Mr. Sheets has not attempted to make another payment through any other means, such as by mailing the payment or by telephone. R. Vol. IV, p. 638, L. 18:23-19:3.

13. Mr. Sheets has also not saved or set aside his monthly mortgage payments and does not have any funds available to pay towards bringing the Mortgage Loan current. R. Vol. IV, p. 638, L. 21:11- R. Vol. IV, p. 639, L. 22:14.

14. On or about April 2, 2009, Mr. Sheets applied via telephone to his loan servicer, Bank of America, for a refinance. R. Vol. I, p. 118, ¶ 11.

15. On or about May 6, 2009, Mr. Sheets executed and submitted a written loan application seeking a loan in the principal amount of $87,500 at an interest rate of 5.125%. R. Vol. IV, p. 642, L. 35:2-20; R. Vol. IV, p. 694-696; R. Vol. I, p. 145, ¶ 15 *referencing* Affidavit of Ronald Odeyemi at ¶ 8. This is referred to herein as the "Mortgage Refinance".

16. Mrs. Sheets did not apply for the Mortgage Refinance. R. Vol. IV, p. 643, L. 38:16-24.

17. A closing on the Mortgage Refinance was scheduled for October 27, 2009. R. Vol. I, p. 120, ¶ 16; R. Vol. I, p. 145, ¶ 17 *referencing* Affidavit of Ronald Odeyemi at ¶ 11.

18. Mr. Sheets testified that at the closing, the title company agent did not let him execute documents because the documents were "bad", and as a result the Mortgage Refinance did not close. R. Vol. I, p. 119-120, ¶ 16; R. Vol. IV, p. 646, L. 52:8-20.

19. Bank of America has no record regarding the title company agent's determination that the loan documents were "bad", and at the time of the closing was fully prepared to close and fund the loan. R. Vol. I, p. 145, ¶ 19, *referencing* Affidavit of Ronald Odeyemi at ¶ 14.

20. Mr. Sheets received a package of closing documents for the Mortgage Refinance at his home *via* Federal Express on or about October 27, 2009. R. Vol. IV, p. 640, L. 29:18- R. Vol. IV, p. 641, L. 30:1; R. Vol. I, p. 167-168, Response to Interrogatory No. 5.

21. Among the closing documents received by Mr. Sheets was an unexecuted Note. R. Vol. I, p. 145, ¶ 21 *referencing* Affidavit of Ronald Odeyemi at ¶ 13; R. Vol. IV, p. 640, L. 29:25- R. Vol. IV, p. 641 L. 30:7; R. Vol. IV, p. 692-693.

22. The Mortgage Refinance closing documents did not reflect what Mr. Sheets believed were the terms of the refinance he had applied for. R. Vol. IV, p. 641, L. 30:21-31:4; R. Vol. IV, p. 642, L. 34:6-19.

23. The Note reflected in the Mortgage Refinance closing documents was for a principal amount of $87,500 at an interest rate of 5.125% and required an escrow account for taxes and insurance. R. Vol. IV, p. 648, L. 60:5-10; R. Vol. IV, p. 692, ¶¶ 1 & 2.

24. Mr. Sheets wanted, and believed he had applied for and would be offered, a refinance in a principal amount of $108,000 and with no requirement that he escrow money for taxes and insurance. R. Vol. IV, p. 641, L. 30:21-31:4; R. Vol. IV, p. 647, L. 56:16-57:7.

25. Had he been given the opportunity by the title agent, Mr. Sheets would not have executed the Mortgage Refinance documents because they had a requirement for escrow and because he did not agree to the loan costs as set forth in the closing documents. R. Vol. IV, p. 648, L. 60:5-14.

26. Mr. Sheets did not receive any documentation from Bank of America indicating it would make a loan in the amount of $108,000, or for an interest rate of less than 5.125%, or that did not require him to escrow taxes and insurance. R. Vol. IV, p. 641, L. 31:5-15; R. Vol. IV, p. 643, L. 40:9-13.

27. Mr. Sheets is not seeking to enforce the Mortgage Refinance reflected in the unexecuted closing documents including the note, but rather the undocumented loan of $108,000, at some interest rate of less than 5.125%, with lower costs, and no requirement that taxes and insurance be escrowed. R. Vol. IV, p. 642, L. 36:21-25; R. Vol. IV, p. 642, L. 37:18- R. Vol. IV, p. 643, L. 38:6.

28. Following the failed loan closing, Bank of America erroneously proceeded as if the refinance had closed by funding the Refinance Loan and changing servicing status for the Mortgage Loan. R. Vol. I, p. 147, ¶ 28 *referencing* Affidavit of Ronald Odeyemi at ¶ 18.

29. Among the errors, on November 9, 2009, the trustee erroneously recorded a reconveyance of the Deed of Trust on the Mortgage Loan. R. Vol. I, p. 121, ¶ 19; *see also*, R. Vol. I, p. 11, ¶ 7; R. Vol. I, p. 16-27.

30. On or about November 24, 2009, Bank of America noticed the error and unfunded the Mortgage Refinance and returned the Mortgage Loan to normal servicing. R. Vol. I, p. 147, ¶ 30.

31. On or about March 19, 2010, correspondence was sent to Mr. Sheets requesting him to cooperate to correct the erroneous reconveyance of the Deed of Trust and asking for Mr. and Mrs. Sheets to execute the necessary stipulation. R. Vol. IV, p. 639, L. 23:12-17; R. Vol. IV, p. 686-689.

32. Mr. Sheets and Mrs. Sheets did not execute the stipulation and, as evidenced by the pleadings in this case, they have not cooperated in correcting the erroneous reconveyance. R. Vol. IV, p. 639, L. 23:23-24:14.

33. Bank of America corrected all errors with regard to servicing and returned all money paid by Mr. Sheets for the appraisal and application for the Mortgage Loan in about April of 2010. R. Vol. IV, p. 645, L. 46:25-47:13; R. Vol. I, p. 147, ¶ 33 *referencing* Affidavit of Ronald Odeyemi at ¶¶ 20 – 21.

34. Mr. and Mrs. Sheets have been unable to identify any actions they took in reliance on purported representations made by Bank of America. R. Vol. I, p. 174, Response to Interrogatory No. 19.

35. Mr. Sheets contends that his Trans Union and Experian credit reports are erroneous because they report their payments on the loan as "120 days late". R. Vol. IV, p. 652, L. 76:5-11; R. Vol. I, p. 170, Response to Interrogatory No. 8.

36. Mr. Sheets notified only "Countrywide/Bank of America directly" regarding his dispute about credit information, and is unable to identify any dispute he filed with a credit reporting agency. R. Vol. I, p. 170, Response to Interrogatory No. 9.

37. Mr. Sheets was unable to identify any credit reporting with regard to the Mortgage Refinance application that did not close. R. Vol. IV, p. 649, L. 64:22-65:1.

38. A credit report obtained on or about September 22, 2009 in connection with the Mortgage Refinance application indicates that at that time, Mr. Sheets' credit scores were as follows: Experian – 750, Equifax – 695, and Transunion (TUC) – 685. R. Vol. I, p. 148, ¶ 38, *referencing* Affidavit of Ronald Odeyemi at ¶ 9; *see also*, R. Vol. IV, p. 649, L. 65:3-23; R. Vol. IV, p. 707.

39. Mr. Sheets acknowledges that his credit scores have only increased since November of 2009. R. Vol. I, p. 170, Response to Interrogatory No. 8.

40. Mr. Sheets has no documentation that would indicate his credit scores decreased from November of 2009 through the present. R. Vol. IV, p. 650, L. 66:19-21.

41. A credit report provided by Mr. Sheets in discovery indicates that his Equifax credit score increased from 695 to 744 between the September 22, 2009 credit report, and the November

25, 2010 credit report he produced in discovery. R. Vol. IV, p. 649, L. 65:24- R. Vol. IV, p. 650, L. 66:21; R. Vol. IV, p. 707-709.

42. Mr. Sheets conceded at his deposition that his Equifax credit report contains no information which he considers inaccurate. R. Vol. IV, p. 650, L. 66:22-67:12.

43. Mr. Sheets was unable to identify any inaccurate credit information in another Equifax credit report he produced in discovery. R. Vol. IV, p. 650, L. 67:17-68:2; R. Vol. IV, p. 710-712.

44. Mr. Sheets was unable to identify any inaccurate reporting on an Experian credit report he produced through discovery, other than to state he believes the statement in the report of past due of $2,255 as of March 2010 "could be wrong." R. Vol. IV, p. 650, L. 67:14-68:19; R. Vol. IV, p. 713.

45. Mr. Sheets acknowledges that the last payment he made on the Mortgage Loan was in October of 2009 for the payment due November of 2009. R. Vol. IV, p. 637, L. 15:25-16:4; R. Vol. IV, p. 657, L. 71:9-23; R. Vol. I, p. 120, ¶ 17; R. Vol. I, p. 149, ¶ 45 *referencing* Affidavit of Ronald Odeyemi at ¶ 7; R. Vol. I, p. 174, Response to Interrogatory No. 20.

46. Under terms of the Note, as of March, 2010, Mr. Sheets was due for monthly installments of $563.92 for December of 2009, January 2010, February 2010, and March 2010, for a total past due principal and interest payments of $2,255.60. R. Vol. I, p. 14, ¶ 3.

47. A credit report that was provided by Mr. Sheets in discovery indicates that his Transunion credit score increased from 685 to 775 between September 22, 2009 and May 16, 2011. R. Vol. IV, p. 650, L. 69:11- R. Vol. IV, p. 651, L. 70:11; R. Vol. IV, p. 714-715.

48. Mr. Sheets testified that the statement in the Transunion credit report that he is "120 days past due" and that $2,255 past due is the only information in his Transunion credit report upon which he bases his claims for relief. R. Vol. IV, p. 652, L. 76:5-11.

49. The Sheets have identified the credit reporting as the sole incident supporting their claim for violations of the Idaho Consumer Protection Act. R. Vol. I, p. 170-171, Response to Interrogatory No. 10 (referencing Responses to Interrogatories Nos. 9 and 10).

50. Mr. Sheets does not have any evidence that anyone at Bank of America acted with intent to deceive or harm him in its dealings with him. R. Vol. IV, p. 655, L. 87:10-24.

III. ATTORNEYS' FEES ON APPEAL

Countrywide requests costs and attorneys' fees against Mr. Sheets under Paragraph 9 of the Deed of Trust. By signing the Deed of Trust, Mr. Sheets agreed that:

> If [ ] Borrower fails to perform the covenants and agreements contained in this Security Instrument..., then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interests in the Property and rights under this Security Instrument, including...(a) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument...., [which amounts] shall become additional debt of Borrower secured by this Security Instrument.

R. Vol. I, p. 21, ¶ 9. As discussed below, it is undisputed that Mr. Sheets is in default under his mortgage loan because he has not made a payment since October 2009. It is further undisputed that the Deed of Trust securing Mr. Sheet's mortgage loan was only intended to be released once the loan had been paid in full. It was released prematurely by mistake. Mr. Sheets has attempted to exploit this mistake to avoid his obligation to re-pay the mortgage debt by heavily contesting Countrywide's efforts to remedy the mistake, and by asserting meritless and unsubstantiated counterclaims against Countrywide and various third party defendants.

In addition, Countrywide requests costs and attorneys' fees against both Appellants because their conduct drastically increased litigation expenses in the District Court, and now they have filed a frivolous appeal. As discussed in more detail below, Appellants failed to contest, or properly contest, the facts presented by Countrywide in support of its summary judgment motion and thereby conceded them. They also waived various arguments relating to dismissal of their counterclaims by failing to respond to same in response to Countrywide's motion for summary judgment dismissing such claims. Moreover, Appellants have failed to properly present their arguments to this Honorable Court and have taken legally and factually unsupported positions, particularly regarding what they contend is the proper standard to be applied in evaluating a summary judgment.

For all of these reasons, Countrywide seeks its costs and fees for responding to a frivolous appeal under Idaho Code § 12-123, and should it prevail, as the prevailing party under Idaho Code § 12-120 & 12-121

IV. ARGUMENT

A. Appellants Waived or Failed to Properly Present Numerous Arguments on Appeal, and Those Arguments Should Therefore be Disregarded

In raising issues for appellate review, three rules are fundamental. First, "it is well established law that a litigant may not remain silent as to a claimed error and later raise objections for the first time on appeal." *Michalk v. Michalk,* 148 Idaho 224, 230, 220 P.3d 580, 587 (2009). "Additionally, substantive issues will not be considered for the first time on appeal. " *Id.* In other words, the Court will not consider any issue that Appellant failed to preserve. *Id.*

Finally, a litigant may not simply throw his hands in the air and cry, "the trial court got it wrong!" He must identify specific errors of fact or of law committed by the District Court, or an abuse of discretion, that he can support with relevant legal authority, specific citations to the factual record, and logical argument. As this Court has explained:

> [T]his Court has refused to consider an appellant's claims because he has failed to support them with either relevant argument and authority or coherent thought. Where an appellant fails to assert his assignments of error with particularity and to support his position with sufficient authority, those assignments of error are too indefinite to be heard by the Court. A general attack on the findings and conclusions of the district court, without specific reference to evidentiary or legal errors, is insufficient to preserve an issue. This Court will not search the record on appeal for error.

Clark v. Cry Baby Foods, LLC, et. al., 152 Idaho 182, 307 P.3d 1208, 1212 (2013) (citations omitted).

Appellants' brief runs afoul of all three fundamental rules of appellate procedure. Many of the arguments raised on appeal were not properly preserved and/or not properly presented on appeal, including:

- Appellants failed to contest the facts set forth by Countrywide in support of its summary judgment motions, and therefore conceded them and waived any right to contest them on appeal.
- Appellants failed to assert any defenses in response to Countrywide's summary judgment motion aside from an unclean hands and an estoppel-based defense, thereby waiving any other potential defenses.
- Appellants failed to respond to Countrywide's arguments on summary judgment as to why Appellants' claims for slander of credit and violation of the FCRA, Idaho Consumer Protection Act, and Idaho Code §45-1502 should be dismissed, thereby conceding such arguments and waiving any right to present them here.
- Appellants failed to present any argument or citation to legal authority supporting their position that the Odeyemi and Haworth affidavits should have been stricken.
- Appellants failed to provide a complete record to the Court, including omitting key evidence they challenge as insufficient, such as the affidavit of Mr. Odeyemi.

Appellants' arguments on these points should therefore be disregarded.

B. The District Court Property Granted Summary Judgment on Countrywide's Claim and Appellants' Counterclaims

Appellants contend that the District Court erred in granting summary judgment for Countrywide because it misapplied the summary judgment standard. Appellants' argument is seriously flawed in numerous respects. Specifically, Appellants argue that the District Court erred because Countrywide had the "sole burden of establishing that there were no material facts

or issues pertaining to the counterclaims or equitable defenses pleaded and raised by Sheets. BofA also had the sole burden to establish that it had not engaged in any conduct that would preclude the equitable relief it sought." Appellants' Br. 7-8. In other words, Appellants incorrectly believe that "as the non-moving party, [they] did not have any affirmative duty to establish [their] case as part of the summary judgment proceedings," Appellants' Br. 12, including with respect to their defenses and counterclaims, which they contend were Countrywide's burden to disprove.

Appellants also appear to believe that any factual disagreement or disputed issue of law is sufficient to preclude summary judgment, and contend that their allegations and characterization of facts in the record should be accepted because "[t]he evidence of the party opposing summary judgment is to be believed...." Appellants' Br. 6.

The standard articulated by Appellants is incorrect, in several respects, including (1) the burden shifting scheme contemplated by Rule 56; (2) what constitutes a material issue of fact sufficient to preclude summary judgment; (3) the sufficiency of evidence required to create a material issue of fact; (4) that only factual issues, not legal or discovery disputes, will preclude summary judgment; and (5) which party bears the burden of proof on defenses and counterclaims.

1. The Summary Judgment Standard

"[T]he purpose of summary judgment is to eliminate the necessity of trial where facts are not in dispute and where existent and undisputed facts lead to a conclusion of law which is

certain." *Berg v. Fairman*, 107 Idaho 441, 444, 590 P.2d 896, 899 (1984) (citations omitted). Summary judgment is not to be viewed as a "disfavored procedural shortcut," but rather as the "principal tool by which factually insufficient claims or defenses can be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Nu-West Min. Inc. v. U.S.*, 768 F.Supp.2d 1082, 1086 (D. Idaho 2011) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)).

The burden of proving the absence of material facts is initially upon the moving party. *Thomas v. Med. Cntr. Physicians, P.A.*, 138 Idaho 200, 205, 61 P.3d 557, 562 (2001) (internal citations omitted). Once the moving party has demonstrated the absence of a question of material fact, the ***burden shifts*** to the nonmoving party to demonstrate an issue of material fact sufficient to preclude summary judgment. *Id.* Mere allegations or denials are insufficient to create a genuine issue of material fact. *Id.* "The nonmoving party must come forward with evidence, by affidavit or otherwise, that contradicts the evidence submitted by the moving party in order to survive summary judgment." *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 246 P.3d 961 (2010) (internal citations omitted). "A mere scintilla of evidence is not enough to create a question of fact that will preclude summary judgment." *Id.* "The Supreme Court exercises *de novo* review of appeals from an order of summary judgment, and this Court's standard of review is the same as the standard used by the trial court. *Reynolds v. Trout Jones Gledhill Fuhrman, P.A.*, 154 Idaho 21, 293 P.3d 645 (2013) (citations omitted).

"The moving party is entitled to judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial." *Thomas*, 138 Idaho at 205, 61 P.3d at 562. The defendant has the burden of establishing the elements of any defenses. *Chandler v. Hayden*, 147 Idaho 765, 215 P.3d 485, (2009); *Stuard v. Jorgenson*, 150 Idaho 701, 704, 249 P.3d 1156, 1159 (2011).

Accordingly, this Court should uphold the District Court's grant of summary judgment on Countrywide's claim because Countrywide presented evidence to establish each element of its claim, Appellants offered no contradictory evidence sufficient to create a material issue of fact, and the undisputed facts entitle Countrywide to an order voiding the mistakenly recorded reconveyance. Likewise, the District Court properly found that Appellants had not met their burden of proving the elements of their defenses or counterclaims as required to create a triable issue of fact concerning the viability of such defenses and claims.

2. The District Court Properly Granted Summary Judgment for Countrywide on Its Claim for an Order Voiding the Mistakenly Recorded Reconveyance

a. The Undisputed Material Facts Entitle Countrywide to Relief

Countrywide's complaint asserts a claim for relief voiding the mistakenly recorded reconveyance of its Deed of Trust. The District Court determined that Countrywide's entitlement to such relief turned on the language of the Deed of Trust itself. R. Vol. III, p. 8. In other words, Countrywide's entitlement to relief can be distilled down to two questions: (1)

what the Deed of Trust says concerning when the security is to be released; and (2) whether those conditions were satisfied. Appellants have not identified any error of law by the District Court in determining that the plain language of the Deed of Trust controls, and the District Court's holding should not be disturbed.[4]

The factual record is undisputed concerning the two dispositive questions. It is undisputed that the Deed of Trust provides it will be released only upon payment in full of the loan. R. Vol. I, p. 11, ¶ 6; R. Vol. I, p. 112, ¶ 6; R. Vol. I, p. 117-118, ¶ 9; R. Vol. I, p. 25, ¶ 23. It is also undisputed that Appellants did not pay off the loan. R. Vol. IV, p. 637, L. 15:17-21. In fact, Appellants have not made a payment on the loan in over five years

b. The Purported "Factual Issues" Raised by Appellants are Not Factual Issues, or are Not Material to the Dispute

Appellants do not identify any facts pertinent to the dispositive questions which they contend were overlooked by the District Court. Instead, they attempt to confuse and distract from the real issues in the case by raising a host of purported discovery disputes and factual issues (which in many cases are mere speculation) which have no relevance whatsoever to

[4] Appellants contend that the District Court erred in granting relief on Countrywide's claim because, they argue, "rescission" is only an appropriate remedy where there has been a mutual mistake. Appellants' Br. 14-15. In making this argument, Appellants overlook the substance of Countrywide's claim which plainly seeks a judgment declaring the reconveyance void, as opposed to traditional rescission of a contract entered into by mutual mistake. As discussed below, it makes no difference whether Countrywide labeled its claim as one for "rescission" versus a claim for "declaratory judgment" because it is the substance of a party's claim which controls. *Carroll v. MBNA America Bank,* 148 Idaho 261, 268, 220 P.3d 1080, 1087 (2009). The District Court properly found that Countrywide had pled and proven a claim of entitlement to declaratory relief and Appellants have not shown otherwise.

Countrywide's claim. Disputed issues of fact will only preclude summary judgment insofar as they are supported by competent evidence and are *material* to the claims in dispute. "A material fact is one upon which the outcome of the case may be different." *Peterson v. Romine,* 131 Idaho 537, 540, 960 P.2d 1266, 1269 (1998).

The purported issues of fact raised by Appellants on appeal fall into two categories – discovery disputes and alleged conduct surrounding the failed refinance. As an initial matter, this is not the appropriate forum to raise discovery issues. To the extent Appellants wished to challenge the sufficiency of Countrywide's discovery responses, the mechanism to do so was a motion to compel filed in District Court. Appellants failed to file any such motion and thereby waived any arguments concerning the sufficiency of Countrywide's discovery responses. Moreover, Appellants cannot manufacture a disputed issue of material fact out of a discovery dispute.

Appellants also argue that the circumstances leading up to and surrounding the failed refinance are material to the dispute. In particular, Appellants focus on two documents they allege were fraudulently created in connection with the failed refinance. Appellants argue that these two documents "call[ ] into serious question the veracity of all other documents produced by BofA in support of its claim for relief." Appellants' Br. 17. Based on this broad-brush assertion, Appellants contend that summary judgment is improper and they are entitled to a trial.

Appellants' arguments are unavailing. As the District Court properly held, Countrywide's claim boils down to the undisputed facts that the clear and unambiguous language

of the Deed of Trust provides it would not be released until the loan was paid in full, and the loan was not paid in full. These facts are supported by credible evidence and Appellants do not contest them.

In rejecting Appellants' far-fetched argument that the alleged "fraudulent" closing documents create an issue of fact as to all issues in the case, the District Court explained as follows:

> The court is fully aware of the claims and arguments made by Sheets about the conduct of BofA throughout the loan refinancing, failed loan closing, and all subsequent actions of BofA. However, the court does not find that the conduct of Bank of America as it relates to the failed refinancing and all subsequent actions, to be relevant to this specific legal issue because the court has determined that the plain language of the Note and Deed of Trust controls the actions and rights and obligations of the parties to those agreements. The court need not delve into the specific conduct of the parties outside those agreements other than as set forth above.

R. Vol. III, p. 421. This Court should similarly find because Appellants have failed to identify any error of fact or of law sufficient to disturb the District Court's ruling.

c. The District Court Properly Denied Appellants' Motions to Strike Countrywide's Affidavits

Appellants also contest the grant of Countrywide's summary judgment motion on the basis that the affidavits submitted in support thereof were insufficient. In the District Court, Appellants moved to strike the affidavits of Bank of America employees Shiranthika Haworth and Ronald Odeyemi, submitted in support of Countrywide's motion, on the basis that the attesting witnesses did not have sufficient knowledge of the facts set forth in their affidavits. Now on appeal, Appellants again assert that the affidavits were insufficient. Although

Appellants identify the sufficiency of Countywide's affidavits as an issue presented on appeal, (*see* Appellants' Br. ii, Issue 2), their brief contains no actual argument or citation to legal authority on the sufficiency of the Haworth and Odeyemi affidavits. Even if Appellants had sufficiently presented the issue for the Court's consideration, Appellants' arguments are unavailing.

"The admissibility of evidence under I.R.C.P. 56(e) is a threshold question" that should be analyzed prior to applying the rules governing summary judgment. *Herrera v. Estay,* 146 Idaho 674, 680, 201 P.3d 647, 653 (2009). Under I.R.C.P. 56(e) , "affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify in the matters stated therein." I.R.C.P. 56(e) . A trial court's determination of the admissibility of testimony offered in connection with a motion for summary judgment is reviewed for abuse of discretion. *Herrera*, 146 Idaho at 680, 201 P.3d at 653. A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of its discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason. *Id.*

The District Court properly found there was sufficient foundation for the testimony set forth in the Haworth and Odeyemi affidavits and denied Appellants' motion to strike. For example, the affidavits state that the affiants are each an "Assistant Vice President – Operations Team Lead with Bank of America, N.A., the servicer of the loan at issue in the above captioned case." R. Vol. II, p. 224, ¶ 1; R. Vol. IV, p. 606. The witnesses each state that they are

"over the age of 18 and have personal knowledge of the facts stated in [the] affidavit based on [their] review of books and records kept in the ordinary course of business of Bank of America, N.A." R. Vol. II, p. 224, ¶ 2; R. Vol. IV, p. 606. The affidavits then go on to testify as to a number of facts which are supported by attached documents and records. R. Vol. II, p. 225, ¶¶ 3-12; R. Vol. IV, p. 606. Ms. Haworth and Mr. Odeyemi make these statements on behalf of Bank of America "upon being duly sworn." R. Vol. II, p. 226; R. Vol. IV, p. 606. Appellants have filed to identify any abuse of distraction by the District Court in denying their Motions to Strike and allowing the Haworth and Odeyemi affidavits.

d. The District Court Was Within Its Discretion to Award Declaratory Relief to Countrywide

Appellants further argue that the summary judgment order should be overturned because the District Court abused its discretion by issuing a declaratory judgment when Countrywide's complaint did not contain a cause of action expressly entitled "declaratory judgment." Declaratory relief is discretionary, and the District Court's order declaring the reconveyance void is therefore analyzed under an abuse of discretion standard. *See generally, Natural Resources Defense Council v. Abraham*, 388 F.3d 701, 705 (9th Cir. 2004).

Under the liberal pleadings standards of I.R.C.P. 8, a complaint need "only contain a concise statement of the facts constituting the cause of action and a demand for relief." *Youngblood v. Higbee*, 145 Idaho 665, 668, 182 P.3d 1199, 1202 (2008). Under this rule, a pleading is sufficient if it states a claim and requests a remedy. *Id.* "[N]o technical forms of

pleading or motions are required" and "all pleadings shall be so construed as to do substantial justice." I.R.C.P. Rule 8(e)(1),(f). Accordingly, this Court treats mislabeled claims according to their substance in civil cases. *Carroll*, 148 Idaho at 268, 220 P.3d at 1087.

A complaint states a claim for declaratory relief when a party asks the court "to declare the rights, status and legal relations" of the parties. I.C. § 10-1201. In stating a claim for declaratory judgment, the plaintiff must show that there is a judiciable controversy between the parties and that "the judgment or decree will terminate the controversy or remove an uncertainty." I.C. § 10-1205. Countrywide's complaint stated a claim for declaratory relief, and satisfied the pleading requirements of Rule 8, but alleging the following facts: (1) "On November 9th, 2009, through a mistake, inadvertence or error, the trustee, under the deed of trust, caused to be recorded a reconveyance of the December 21, 2004 deed of trust..." R. Vol. I, p. 11, ¶ 7; (2) "Under the terms of the note and deed of trust, Sheets was only entitled to a deed of reconveyance upon full satisfaction of the sums due and owing under the promissory note" *Id.*; (3) The note has not been satisfied" *Id.*; and therefore "***The deed of reconveyance should be declared null and void and the original deed of trust restored in the same force and effect as on the date originally executed and intended by Plaintiff and Sheets.***" R. Vol. I, p. 12, ¶ 9 (emphasis added).

It makes no difference that Countrywide labeled its claim one for "rescission" rather than one for "declaratory judgment" because Idaho courts focus on the substance of the claim. *See, e.g., Carroll*, 148 Idaho at 268, 220 P.3d at 1087. Countrywide's complaint clearly set forth its

request for declaratory judgment and the facts entitling it to such relief. Appellants had full and fair notice of the claim, which is all that Rule 8 requires. They do not allege otherwise. Nor do they identify any abuse of discretion sufficient to overturn the District Court's order. The declaratory judgment should therefore be upheld.

e. The District Court Properly Found That The Defenses Asserted by Appellants Did Not Preclude Summary Judgment on Countrywide's Claims

Appellants' answer in this case asserted eleven purported defenses to Countrywide's claims. The only defenses argued in response to Countrywide's summary judgment motion were an unclean hands defense, and an estoppel-type defense based on the alleged "willful misconduct or gross negligence" of Bank of America.[5] *See* R. Vol. II, p. 323-324. Specifically, Appellants argued that the failed refinance and "fraudulent" Disbursement Authorization Checklist and Loan Quality Checklist documents allegedly created by Bank of America after the scheduled closing date should somehow preclude declaratory relief voiding the mistakenly recorded reconveyance. The District Court determined that neither of these defenses barred the relief sought by Countrywide because the conduct involved was not "inequitable, unfair and dishonest, or fraudulent and deceitful" with respect to the issues in dispute, namely, (1) what the Deed of Trust said concerning when it would be released; and (2) whether the debt secured by the Deed of Trust had been paid. *See* R. Vol. III, p. 424.

[5] By choosing not to raise any other defenses in their opposition to Countrywide's summary judgment motion, Appellants waived them.

On appeal, Appellants argue that the District Court erred because Countrywide had the "sole burden" on summary judgment, including the "sole burden of establishing that there were no material facts or issues pertaining to the...equitable defenses pleaded and raised by Sheets," and the "sole burden to establish that it had not engaged in any conduct that would preclude the equitable relief it sought." Appellants' Br. 7. "Sheets, as the non-moving party did not have any affirmative duty to establish its case as part of the summary judgment proceedings." *Id.* at 12. In other words, Appellants contend that Countrywide had the burden of disproving their defenses.

Appellants are simply wrong on this point. It is a defendant's burden to prove its defenses in order to survive summary judgment. *Chandler*, 147 Idaho at 771, 215 P.3d at 491; *Stuard,* 150 Idaho at 704, 249 P.3d at 1159. Mere allegations are insufficient; the defendant must establish each element of its defense with competent evidence. *See Wattenbarger*, 150 Idaho at 317, 246 P.3d at 970.

Countrywide disputes the evidence proffered in support of Appellants' asserted defenses, particularly their characterization of the Disbursement Authorization Checklist and Loan Quality Checklist, or the so-called "Beltron and Wigner Documents." Appellants argue that these two documents were fraudulently created and, are evidence of an overarching, sinister scheme by Countrywide culminating in the failed refinance. There is no evidence to support this wild assertion. The record reflects that Countrywide agreed to fund a loan for $87,500 at a 5.125% interest rate, but Mr. Sheets thought he was getting a loan for $108,000 at some unspecified

interest rate less than 5.125%. R. Vol. IV, p. 642, L. 36:10-14; R. Vol. IV, p. 641, L. 30:21-31:4. The reason for this discrepancy is unknown. There is no evidence in the record showing that Countrywide ever agreed to refinance Mr. Sheets' loan on the terms he alleges. In any case, the reason the refinance did not close is immaterial to the question of whether Countrywide is entitled to have the mistaken reconveyance set aside.

The District Court held that in order to establish an unclean hands defense, Appellants were required to show "inequitable, unfair and dishonest, or fraudulent and deceitful" conduct "***as to the controversy in issue***." Order, p. 11. The District Court found no evidence in the record to support such a finding. Appellants do not argue that the Court applied the wrong legal standard, or point to any evidence the Court overlooked or misconstrued. Nor do they establish how the alleged fraudulent documents are relevant to the controversy in issue. Appellants conclusorily assert that the documents "had a direct nexus to the recording of the [ ] Reconveyance," but fail to explain what that nexus might be. Appellants' Br. 19. This is insufficient to establish an abuse of discretion as required to overturn the District Court's well-reasoned ruling.

3. The District Court Property Granted Summary Judgment Dismissing Appellants' Counterclaims

For the same reasons, the District Court properly granted summary judgment dismissing Appellants' counterclaims for breach of contract, specific performance, slander of credit, and violation of the FCRA, Idaho Consumer Protection Act, and Idaho Code 45-1502. It is

ultimately Appellants' burden to prove their counterclaims. I.R.C.P. 56(a). Accordingly, summary judgment is appropriate if there is insufficient evidence to establish even one element of a claim, or a claim fails as a matter of law based on the undisputed facts. *Doe v. City of Elk River*, 144 Idaho 337, 338, 160 P.3d 1272, 1273 (2007). It is important to note that only disputed issues of *material fact* will preclude summary judgment. Collateral facts, or disputed questions of law, will not. The Court can (and should) resolve disputed issues of law. *Stuard,* 150 Idaho at 704, 249 P.3d at 1159.

a. This District Court Property Dismissed Appellants' Claims for Breach of Contract and Specific Performance

Appellants brought counterclaims for breach of contract and specific performance, ostensibly based on the theory that Mr. Sheets and Countrywide had a binding, enforceable agreement that the loan would be refinanced for $108,000 at some interest rate less than 5.125%. The problem with this theory, as noted by the District Court, is that Mr. Sheets may have believed he was being loaned $108,000 at some lower interest rate, but Countrywide had only agreed to loan him $87,500 at 5.125%. The reason for this discrepancy is unknown. What is clear, however, is that there was no "meeting of the minds" between the parties, and therefore no enforceable agreement. *See* R. Vol. III, p. 429. Furthermore, Ms. Sheets did not apply for the refinance loan and therefore has no standing to sue for breach of contract. R. Vol. IV, p. 694-696.

On appeal, Appellants urge that the District Court erred in dismissing their claim for breach of contract because there was a "commitment to lend money," giving rise to an enforceable contract. Appellants' Br. 13. Appellants neglect the fundamental problem with this theory, which is the over $20,000 discrepancy between the amount Countrywide agreed to lend and the amount Mr. Sheets apparently thought he was receiving. Countrywide was prepared to refinance the loan for $87,500 at 5.125%, as it had proposed, but Mr. Sheets wanted more. The amount of the loan and applicable interest rate are core terms of any agreement to lend money. The District Court properly found that without a meeting of the minds as to this material term, there was no enforceable agreement. *See, e.g., Inland Title Co. v. Comstock*, 116 Idaho 701, 703, 779 P.2d 15, 17 (1989).

Furthermore, the statute of frauds requires that any agreement to lend money must be reduced to writing to be enforceable. *Lettunich v. Key Bank Nat. Ass'n*, 141 Idaho 362, 367, 109 P.3d 1104, 1109 (2005); I.C. § 9-505(5). There is no evidence of any written agreement between the parties to refinance the loan for $108,000 at a lower interest, rate as alleged by Mr. Sheets, and Appellants' breach of contract claim fails for this independent reason. Appellants conceded this fact by failing to present any contrary evidence in response to Countrywide's summary judgment motion.

On appeal, Appellants do not directly address the applicability of the statute of frauds and the problems it creates for their claims. Instead, they appear to argue that an agreement can be implied by the conduct of the parties. The case they cite in support, *Bajrektarevic v. Lighthouse*

Home Loans, Inc., 143 Idaho 890, 155 P.3d 691 (2007), does not support such an argument. *Bajrektarevic* involved claims by prospective mortgage borrowers against a lender, alleging that the lender had breached a written "lock-in" agreement to provide a loan at 5.125%, by presenting them with a higher interest rate at closing. The District Court granted the lender's motion for summary judgment, on the basis that the lock-in agreement did not constitute an enforceable contract to provide the loan at 5.125%. Plaintiffs appealed, and the Supreme Court reversed.

Bajrektarevic is inapposite for several reasons. First, in that case, it was undisputed that the parties had entered into a so-called "lock-in agreement" in writing, providing for a fixed interest rate of 5.125% over a 30 year term, and the question was whether that agreement was enforceable. *Id.* at 891, 692. Here, there is no writing reflecting the loan terms Mr. Sheets claims he was promised. Further, *Bajrektarevic* supports Countrywide's argument that the statute of fraud requires commitments to lend money to be in writing. *Id.* at 893, 694 ("I.C. § 9–505(5) requires a commitment to lend money in the principal amount of $50,000 or more to be in writing and subscribed by the party charged, or by his agent.") *Bajrektarevic* does not establish that a commitment to lend money can be implied by the parties' course of conduct and Appellants' argument must therefore be rejected.

The District Court also properly found that Appellants' claim for specific performance should be dismissed. Specific performance is an extraordinary, discretionary remedy to address a breach of contract. *Garner v. Bartschi*, 139 Idaho 430, 435, 80 P.3d 1031, 1036 (2003). As set forth above, there was no agreement to refinance the loan for $108,000, and therefore no breach

to remedy. Furthermore, specific performance is only appropriate where monetary damages are inadequate – for example, breach of an agreement to sell a particular piece of unique real property. *Id.* Breach of an agreement to lend money is not the type of claim justifying the extraordinary remedy of specific performance because any resulting damages are inherently economic, capable of being fixed and compensated by a monetary award. *See, e.g., Kent v. Walter E. Heller & Co.*, 349 F.2d 480, 481 (5th Cir. 1965) (nothing on topic in Idaho or 9th circuit). Finally, Ms. Sheets had no contract with Countrywide and therefore lacks standing to sue for specific performance. Specific performance is a discretionary remedy, and Appellants have filed to identify any abuse of discretion by the District Court sufficient to overturn the District Court's ruling.

b. Appellants' Waived Their Right to Appeal Dismissal of Their Remaining Claims

In their response to Countrywide's Motion for Summary Judgment, Appellants chose not to respond to Countrywide's arguments urging the dismissal of their counterclaims for slander of credit and violation of the FCRA, Idaho Consumer Protection Act, and Idaho Code §45-1502. *See* R., Vol. III, p. 431, 433, 435-436. By failing to respond and therefore conceding Countrywide's arguments at the summary judgment stage, Appellants failed to preserve any arguments that these claims were not properly subject to dismissal. Even if they had properly preserved the arguments, they do not make them on appeal. Appellants' brief is devoid of any argument or citation to legal authority concerning dismissal of the above-referenced claims.

The District Court's order dismissing Appellant's claims for slander of credit and violation of the FCRA, Idaho Consumer Protection Act, and I.C. § 45-1502 should therefore be upheld. As set forth in Countrywide's Brief in Support of its Motion for Summary Judgment on Defendants' Counterclaims and Third Party Complaint, R. Vol. I, p. 139-163, which arguments are incorporated by reference as if fully set forth herein, dismissal of such claims was proper because:

- Appellants' claim under the FCRA fails because they failed to prove they properly disputed the alleged false credit reporting through a credit reporting agency, as required 15. U.S.C.A. § 1681i(a)(2). They also failed to prove any of the alleged false credit reporting was inaccurate, or that they suffered any damages from the alleged false credit reporting.

- Appellants claims for slander of credit and violation of the Idaho Consumer Protection Act fail because they are preempted by the FCRA. *See* 15 U.S.C.A. § 1681t(b)(1)(F).

- Appellants' claim for violation of the Idaho Consumer Protection Action further fails because they were unable to identify any intentional conduct by Countrywide that would qualify as a deceptive act or practice under I.C. § 48-603.

- Appellants' claim under I.C. § 45-1502, which they allege "prohibits the trustee from being the same as the beneficiary under the deed of trust," fails because Appellants cannot establish that MERS and ReconTrust are the same entity.

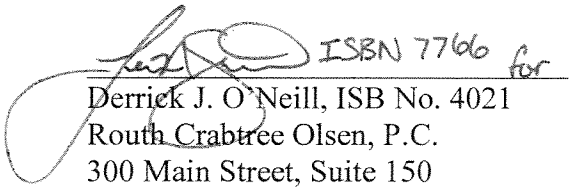
Appellants have failed to show otherwise in their appeal brief. Accordingly, the District Court's order must be upheld.

V. CONCLUSION

For the reasons set forth above, the District Court properly granted summary judgment for Countrywide on its claim to void the mistakenly recorded reconveyance, and dismissed Appellants' numerous unsupported and legally defective counterclaims. Appellants have failed to identify any errors of fact or law, or any abuses of discretion by the District Court, in granting Countrywide's motions. Further, many of the arguments raised on appeal were conceded at the summary judgment stage and therefore waived for purposes of appeal. The District Court's order should be affirmed, and Countywide should be awarded its attorneys' fees and costs for responding to this meritless appeal.

Dated: December 17, 2014

Respectfully submitted,



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