

SONI MELGAR, Plaintiff and Appellant,
v.
DEUTSCHE BANK NATIONAL TRUST COMPANY et al., Defendants and
Respondents.

[No. G051225.](#)

Court of Appeals of California, Fourth District, Division Three.

Filed August 17, 2016.

Appeal from a postjudgment order of the Superior Court of Orange County, Super. Ct. No. 30-2012-00587001, Geoffrey T. Glass, Judge. Affirmed.

Soni Melgar, in pro. per., for Plaintiff and Appellant.

Wright, Finlay & Zak, T. Robert Finlay and Lukasz I. Wozniak for Defendants and Respondents.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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OPINION

O'LEARY, P. J.

Soni Melgar, in propria persona,^{[11](#)} brought an action against her lender and other financial institutions arising from her 2010 default on a loan secured by her residence. In a different appeal, we considered Melgar's argument the trial court erred in sustaining without leave to amend a demurrer to her third amended complaint (TAC) and summary judgment on the remaining causes of action. In our prior nonpublished opinion in that appeal, *Melgar v. Deutsche Bank National Trust Co., et al.* (Jan. 4, 2016, G050257) [nonpub. opn.], **we concluded all of her contentions lacked merit, and we affirmed the judgment. That same day, we also issued an opinion affirming the postjudgment attorney fee awarded to the prevailing parties.** (*Melgar v. Deutsche Bank National Trust Co., et al.* (Jan. 4, 2016, G051225) [nonpub. opn.]¹²)

On April 13, 2016, the California Supreme Court granted Melgar's petitions for review, vacated our prior opinions, and directed this court to reconsider the matter in light of [*Yvanova v. New Century Mortgage Corporation* \(2016\) 62 Cal.4th 919](#) (*Yvanova*). We ordered the parties to provide supplemental letter briefing in both appeals.

After reconsidering the one issue affected by the *Yvanova* opinion in the other appeal (G050257), we reached the same result, i.e., the trial court properly granted the summary judgment motion. We have filed a new opinion affirming the judgment. (*Melgar v. Deutsche Bank National Trust Company et al.* (August 17, 2016, G050257) [nonpub. opn.] (hereafter *Melgar I*.) And because the final decision in *Melgar I* affirmed the judgment, the prevailing party status is unchanged. Accordingly, we find no reason to change the substantive analysis of our prior nonpublished opinion in this appeal and again affirm the award of postjudgment attorney fees.

I

We incorporate by reference the detailed factual summary contained in *Melgar I*. Relevant to this appeal is that in 2005 Melgar executed an adjustable rate note (Note) secured by a deed of trust (DOT), which was recorded against real property located in Costa Mesa. The Note was secured in favor of New Century Mortgage Corporation (New Century). In June 2005, the beneficial interest under the Note and the DOT was transferred to Deutsche Bank National Trust Company (Deutsche), as indenture trustee, and in July 2007, the servicing rights to Melgar's loan were transferred to Carrington Mortgage Services, LLC (CMS). Four years later, in July 2011, Melgar defaulted on the loan and CMS foreclosed on the property. Deutsche filed an unlawful detainer action against Melgar.

Melgar filed a lawsuit to unwind the foreclosure sale. The TAC alleged the following causes of action: (1) wrongful foreclosure; (2) fraud; (3) promissory estoppel; (4) violations of California Rosenthal Fair Debt Collection Practices Act (RFDCPA); (5) violations of the Fair Employment and Housing Act (FEHA); (6) unfair and deceptive business practices UCL (UBP); (7) negligence; (8) slander of title; (9) intentional infliction of emotional distress (IIED); (10) quiet title; (11) declaratory relief; and (12) breach of oral executed agreement.

CMS and Deutsche demurred to the TAC. The court sustained the demurrer without leave to amend as to all claims except fraud, promissory estoppel, UBP, negligence, IIED, and breach of oral executed contract. Next, CMS and Deutsche

filed motions for summary judgment, or in the alternative, for summary adjudication of issues. The court granted the summary judgment on the ground it was undisputed Melgar did not make any attempt to tender the amounts due on the loan. In 2014, the trial court entered a judgment in favor of CMS and Deutsche. We found meritless Melgar's appeal from the judgment in *Melgar I*.

CMS and Deutsche filed a motion for attorney fees. After considering Melgar's opposition, **the court granted the motion and awarded \$76,890**. Melgar appealed from this postjudgment order.

II

In *Melgar I*, we determined Melgar's challenge to the ruling on demurrer was forfeited because Melgar failed to discuss anywhere in her briefing why the court got it wrong. She failed to demonstrate her pleadings stated facts sufficient to constitute a cause of action. Melgar's challenge to the trial court's ruling on attorney fees fails for the same reason—Melgar's briefing does not challenge the merits of the trial court's decision.

Except as provided for by statute, **compensation for attorney fees is left to the agreement of the parties**. (Code Civ. Proc., § 1021.) Civil Code section 1717 provides that **reasonable attorney fees authorized by contract shall be awarded to the prevailing party as "fixed by the court."** The trial court has broad discretion to determine the amount of a reasonable fee, and the award of such fees is governed by equitable principles. ([PLCM Group, Inc. v. Drexler \(2000\) 22 Cal.4th 1084, 1094-1095.](#))

"On review of an award of attorney fees after trial, the normal standard of review is abuse of discretion. However, de novo review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees and costs in this context have been satisfied amounts to statutory construction and a question of law. [Citations.] [¶] Stated another way, to determine whether an award of attorney fees is warranted under **a contractual attorney fees provision**, the reviewing court will examine the applicable statutes and provisions of the contract. Where extrinsic evidence has not been offered to interpret the [contract], and the facts are not in dispute, such review is conducted de novo. [Citation.] Thus, it is a discretionary trial court decision on the propriety or amount of statutory attorney fees to be awarded, but a determination of the legal basis for an attorney fee award is a question of law to be reviewed de novo. [Citation.]" ([Carver v. Chevron U.S.A., Inc. \(2002\) 97 Cal.App.4th 132, 142.](#))

In light of the above, there are basically three relevant factors needed to challenge an attorney fee award. However, on appeal Melgar does not dispute (1) *the contract at issue permitted recovery of attorney fees*, (2) she was not the prevailing party, or (3) the fees awarded were reasonable. Simply stated, if Melgar does not dispute the contract permitted fees, there is no need to conduct a de novo review of this issue. Similarly, if she does not dispute the amount awarded, there is no basis to question whether the court abused its discretion in its calculations. A trial court's ruling is presumed to be correct, and the burden of demonstrating error rests squarely on the appellant. (See *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631-632.) Even when our standard of review is de novo, the scope of review is limited to issues that have been adequately raised and are supported by analysis. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.)

Melgar devotes the majority of her briefing on appeal to rearguing the merits of the underlying case. These same issues were raised and addressed in *Melgar I*, and we need not reconsider them in the context of the review of an attorney fee award. As explained, review of an attorney fee award is limited to the basis for that ruling alone and does not require reexamination of the underlying case's merits.

We recognize Melgar believes the Home Affordable Mortgage Program's (HAMP) regulations, legislative intent, and public policy are all reasons to prohibit an attorney fee award in her case. We found no case law, and Melgar cites to none, supporting these theories. Similarly, Melgar's argument attorney fees should not be awarded due to her inability to pay lacks legal support. We deem these arguments waived. When an appellant raises an issue "but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

III

The postjudgment order is affirmed. Respondent shall recover their costs on appeal.

MOORE, J. and THOMPSON, J., concurs.

[1] Although a self-represented litigant is not excused from complying with the rules governing appropriate pleading practice (see *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984 ["mere self-representation is not a ground for exceptionally lenient treatment"]), whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives litigants of a hearing. (Cf. *Alshafie v. Lallande* (2009) 171 Cal.App.4th 421, 432 ["we carefully examine a trial court order finally resolving a lawsuit without permitting the case to proceed to a trial on the merits"].)