

DEC 02 2024

DAVID H. YAMASAKI, Clerk of the Court

BY:  DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

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7	Mid-Wilshire Property, L.P., a California)	Case No.: 30-2015-00801555
8	Limited Partnership,)	
9	Plaintiff,)	JUDGMENT
10	v.)	
11	Dr. Leevil, LLC, a California Limited Liability)	
12	Company,)	
13	Defendant.)	
14)	
15)	
16)	

17 The action was regularly tried as a court trial, on September 30 and October 1, 2, 7, 8, 9,
 18 and 15, 2024, before the Honorable Deborah C. Servino. Appearing as attorneys for Plaintiff
 19 Mid-Wilshire Property, L.P. were Teri T. Pham and Neeloufar Mahrouyan of Enenstein Pham &
 20 Glass. Appearing as attorneys for Defendant Dr. Leevil, LLC were Ronald Richards of Law
 21 Offices of Ronald Richards & Associates, A.P.C.; Mark J. Mulkerin of Burke Williams &
 22 Sorensen LLP; and Geoffrey S. Long of Law Offices of Geoffrey Long, A.P.C.

23 The case was submitted by stipulation of the parties for court trial as to liability on the
 24 following causes of action contained in Plaintiff's First Amended Complaint: (1) wrongful
 25 foreclosure [first cause of action]; and (2) accounting [fifth cause of action]. The parties agreed
 26

1 that if the Court determined that Defendant was liable to Plaintiff on the wrongful foreclosure
2 claim, the action would proceed to a jury trial on the issue of damages on the wrongful
3 foreclosure claim.

4 On October 15, 2024, the Court announced its tentative decision by an oral statement,
5 which was entered in the minutes, pursuant to California Rules of Court, rule 3.1590(a).
6 (10/15/2024 Minute Order.) Plaintiff requested a statement of decision. Defendant filed a
7 response to the request for statement. The Court filed its proposed statement of decision on
8 November 5, 2024. Defendant filed a document entitled "request for corrections/objections to
9 proposed statement of decision". The Court filed its statement of decision on December 2,
10 2024.

11 As indicated in the Statement of Decision, the Court determined that Plaintiff had not
12 proven by a preponderance of the evidence its wrongful foreclosure and accounting causes of
13 action against Defendant.

14 NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

15 Plaintiff Mid-Wilshire Property, L.P. shall take nothing for its claims of wrongful
16 foreclosure and accounting in the First Amended Complaint. Accordingly, judgment is in favor
17 of Defendant Dr. Leevil, LLC.

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19 Dated: 12/2/2024

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21 Deborah C. Servino
22 Judge of the Superior Court
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**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 12/02/2024

TIME: 08:37:00 AM

DEPT: C21

JUDICIAL OFFICER PRESIDING: Deborah Servino

CLERK: S. Valencia

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2015-00801555-CU-OR-CJC** CASE INIT.DATE: 07/28/2015

CASE TITLE: **MID-WILSHIRE PROPERTY, L.P. vs. DR. LEEVIL, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other Real Property

EVENT ID/DOCUMENT ID: 74438813

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

Statement of Decision, filed this date, is attached and incorporated herein by reference.

Court orders Clerk to give notice.

DEC 02 2024

DAVID H. YAMASAKI, Clerk of the Court

BY:  DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

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7 Mid-Wilshire Property, L.P., a California) Case No.: 30-2015-00801555
8 Limited Partnership,)
9 Plaintiff,) STATEMENT OF DECISION
10 v.)
11 Dr. Leevil, LLC, a California Limited Liability)
12 Company,)
13 Defendant.)
14)
15)
16)

17 Plaintiff Mid-Wilshire Property, L.P. was represented by Teri T. Pham and Neeloufar
18 Mahrouyan of Enenstein Pham & Glass. Defendant Dr. Leevil, LLC was represented by Ronald
19 Richards of Law Offices of Ronald Richards & Associates, A.P.C.; Mark J. Mulkerin of Burke
20 Williams & Sorensen LLP; and Geoffrey S. Long of Law Offices of Geoffrey Long, A.P.C.

21 The Court heard testimony in this matter on October 1, 2, 7, and 8, 2024. The Court has
22 considered and weighed the testimony of all the witnesses, has evaluated the credibility of each
23 witness, has considered and weighed the documentary evidence submitted by the parties. The
24 Court has also read and considered the trial briefs submitted by the parties and considered the
25 arguments of counsel. The case was submitted by stipulation of the parties for a court trial as to
26

1 liability on the following causes of action contained in Plaintiff's First Amended Complaint
2 ("FAC"): (1) wrongful foreclosure [first cause of action]; and (2) accounting [fifth cause of action].

3 The parties agreed that if the Court determined that Defendant was liable to Plaintiff on the
4 wrongful foreclosure claim, the action would proceed to a jury trial on the issue of damages on
5 the wrongful foreclosure claim.

6 On October 15, 2024, the Court announced its tentative decision by an oral statement,
7 which was entered in the minutes, pursuant to California Rules of Court, rule 3.1590(a).
8 (10/15/2024 Minute Order.) Plaintiff timely requested a statement of decision, requesting that
9 the statement of decision address 15 controverted issues. Defendant timely filed a response to
10 the request for statement. Defendant asserted that the tentative decision should be the
11 statement of decision, and that the tentative decision addressed all necessary principal
12 controverted issues. Defendant argued that no further issues are required to be decided. The
13 Court agrees. The law is clear that "[a] court's statement of decision need not respond to every
14 point raised by a party or make an express finding of fact on each contested factual matter; it
15 need only dispose of all basic issues and fairly disclose the court's determination as to ultimate
16 facts and material issues in the case. [Citation.]" (*Duarte Nursery, Inc. v. California Grape*
17 *Rootstock Improvement Commission* (2015) 239 Cal.App.4th 1000, 1012.)

18 On November 5, 2024, the Court filed its Proposed Statement of Decision (Cal. Rules of
19 Court, rule 3.1590.) On November 20, 2024, Defendant filed a document entitled "request for
20 corrections/objections to proposed statement of decision." The Court has read and considered
21 the four objections. Defendant raises valid points in its objections. Defendant's first three
22 suggested corrections have been incorporated in the Statement of Decision. The fourth
23 objection has been addressed in the Statement of Decision.

24 On November 22, 2024, Plaintiff filed its objections to the Proposed Statement of
25 Decision and Proposed Judgment. The Court has read and considered the objections. Plaintiff
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1 asserts that the Proposed Statement of Decision is ambiguous and/or omits findings on nine
2 issues. Here, the Proposed Statement of Decision disposes of all basic issues and fairly
3 discloses the Court's determination as to ultimate facts and material issues in the case. (See
4 *Duarte Nursery, Inc. v. California Grape Rootstock Improvement Commission, supra*, 239
5 Cal.App.4th at p. 1012.) Accordingly, Plaintiff's objections are overruled.

6 **BACKGROUND**

7 This case concerns the foreclosure of a commercial property located at 1051 Bryan
8 Avenue in Tustin (the "Tustin Property"). Plaintiff is a limited partnership that owned the Tustin
9 Property. The general partner of Plaintiff was Westlake Healthcare, LLC. Westlake Healthcare
10 LLC's managers were Jeoung Lee aka Joan Lee and her husband (Il Hie Lee). (See Exh. 235,
11 at p. 6.)

12 Westlake Healthcare, LLC was also the general partner of another limited partnership –
13 Westlake Village Property, L.P. (See Exh. 118, at p. 7.) Westlake Village Property, L.P. owned
14 a commercial property located at 250 Fairview Road in Thousand Oaks (the "Thousand Oaks
15 Property"). (Exh. 118, at p. 1.)

16 Each limited partnership borrowed money from TomatoBank, N.A., secured by a deed of
17 trust on its respective real property. Specifically, on January 7, 2008, Plaintiff entered into a
18 business loan agreement with TomatoBank, N.A. for \$4,322,500. The maturity date of the loan
19 was January 15, 2013. The loan was guaranteed by Westlake Healthcare, LLC, Mid-Wilshire
20 Health Care Center, and the Lees. With the loan, Plaintiff executed a promissory note for
21 \$4,322,500. The promissory note was secured by a deed of trust on the Tustin Property.
22 (Exhs. 78-81, 235.) On July 10, 2008, Westlake Village Property, L.P. entered into a business
23 loan agreement with TomatoBank for \$9,204,000. The maturity date of the loan was July 10,
24 2013. With the loan, Westlake Village Property, L.P. executed a promissory note for
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1 \$9,204,000. (Exh. 119.) The promissory note was secured by a deed of trust on the Thousand
2 Oaks Property. (Exhs. 118-120.)

3 Plaintiff was unable to pay off its loan on its January 15, 2013 maturity date. Plaintiff and
4 TomatoBank entered into change in term agreements that extended the due date of the loan.
5 (Exhs. 82 & 86.) On September 16, 2013, Plaintiff and its loan guarantors entered into an
6 extension agreement with TomatoBank. The agreement noted that with the change of term
7 agreements, the loan obligations matured and were all due and payable on June 15, 2013. The
8 extension agreement stated: "Whereas, Borrower and Guarantors acknowledge that in the
9 absence of this Extension Agreement that the Loan Obligations would all be due and payable,
10 but desire Lender to extend the term of the loan obligation in order to gain additional time to pay
11 off those Loan Obligations by obtaining new financing; . . ." (Exh. 87, at p. 2.) As part of the
12 extension agreement, Plaintiff agreed to: "cause Westlake Village Property L.P. to execute and
13 deliver to Lender a Collateral Surety Agreement, in form and substance acceptable to Lender,
14 secured by a Deed of Trust, in favor of Lender, on the real property, commonly known as 250
15 Fairview Road, Thousand Oaks, CA 91361, securing the Loan Obligations, in form and
16 substance acceptable to Lender, based on Lender's customary form." (Exh. 87, at p. 3, § 1.7.)
17 The second deed of trust was to be junior to TomatoBank's first deed of trust on the Thousand
18 Oaks Property. (Exh. 87, at p. 3, § 1.8.) Pursuant to the extension agreement, Westlake
19 Village Property, L.P. placed a second deed of trust on the Thousand Oaks Property to secure
20 Plaintiff's debt. The second deed of trust was recorded. (Exh. 15.) TomatoBank agreed to
21 extend the maturity date of the loan to December 15, 2013. (Exh. 87, at p. 2.)

22 Westlake Village Property, L.P. also was unable to pay off its loan on its July 10, 2013
23 maturity date. It also entered into an extension agreement with TomatoBank that extended the
24 maturity date of its loan to December 15, 2013. (Exh. 306.)
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1 When the loans reached their extended maturity date, Plaintiff and Westlake Village
2 Property, L.P. were unable to pay the loans and were in default. On January 24, 2014, a notice
3 of default and election to sell under deed of trust was recorded with the Orange County Clerk-
4 Recorder as to the Tustin Property. (Exh. 92.)

5 On April 1, 2014, TomatoBank filed an action in Ventura County Superior Court (case
6 no. 56-2014-00450995) against Plaintiff, Westlake Village Property, L.P.; Westlake Healthcare,
7 LLC; Mid-Wilshire Healthcare Center; Westlake Healthcare Center; Il Hie Lee; and Jeoung Lee
8 aka Joan Lee for: specific performance and appointment of receiver; judicial foreclosure of the
9 Tustin Property and the Thousand Oaks Property; commercial guaranties; money lent; money
10 paid; and enforcement of personal property security interest.

11 TomatoBank sold the secured debts of Plaintiff and Westlake Village Property, L.P. to
12 Defendant. Defendant required a declaration from TomatoBank's custodian of records so that
13 TomatoBank's records became Defendant's records. (Exh. 123.) TomatoBank assigned the
14 loans, promissory notes, and deeds of trust to Defendant around the end of July 2014.
15 Defendant's manager was Ronald Richards, who was an attorney. Richards had been the
16 manager since Defendant was formed in July 2014. Richards had no ownership interest in
17 Defendant. At some point, Defendant substituted in for TomatoBank as the plaintiff in the
18 Ventura County Superior Court action.

19 On August 8, 2014, a notice of trustee's sale of the Tustin Property was recorded.
20 According to the notice, the sale was scheduled for September 4, 2014. (Exh. 94B.)

21 Jeoung Lee, attempted to negotiate a forbearance on the foreclosures with Richards.
22 So that the parties could have additional time to negotiate, Richards agreed on August 29, 2014
23 that he would "move the date two days upon receipt of the deposit" of a \$100,000 cashier's
24 check into his client trust account. Richards stated: "I will return if we have no deal" (Exh.
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1 521, at p. 2; see Exh. 519.) Defendant continued the foreclosure sale to September 8, 2014.
2 The parties did not reach a forbearance agreement.

3 Prior to the foreclosure sales on the properties, Plaintiff and Westlake Village
4 Property, L.P. filed Chapter 11 bankruptcies to stop the foreclosures. The bankruptcy court
5 granted Defendant relief from the bankruptcy stay. No evidence was presented at trial as to the
6 extent of the relief from the bankruptcy stay.

7 On February 17, 2015, Defendant assigned all beneficial interests under the second
8 deed of trust to D-Day Capital, LLC. (Exh. 17.) Richards was also the manager for D-Day
9 Capital. On February 19, 2015, Defendant foreclosed on the Thousand Oaks property through
10 non-judicial foreclosure. As the beneficiary of the first deed of trust on the Tustin Property,
11 Defendant assigned to D-Day Capital, prior to the foreclosure, a "limited and circumscribed right
12 to payment" on the promissory note that was executed with Plaintiff's loan. This assignment
13 was not in writing, but was oral.

14 The foreclosure sale of the Thousand Oaks Property resulted in a surplus of
15 \$5,356,924.31. (Exh. 53.) D-Day Capital and Westlake Village Property, L.P. were notified of
16 the surplus. (Exhs. 63-65.) D-Day Capital submitted a surplus proceeds claim for
17 \$4,811,331.35. (Exh. 71.) Richard Reynolds, the attorney for the foreclosure trustee (Special
18 Default Services ["SDS"]), instructed D-Day Capital to resubmit the claim. (Exh. 72.) On March
19 30, 2015, D-Day Capital submitted a revised surplus proceeds claim for \$4,760,657.08. (Exh.
20 74.) The foreclosure trustee excluded all fees that were incurred and interest that accrued after
21 the foreclosure sale on February 19, 2015, as the foreclosure trustee did not believe that they
22 were part of the secured claim against the Thousand Oaks Property. The foreclosure trustee
23 also excluded attorney's fees for auction work. (Exhs. 63, 75, 98A.) D-Day Capital picked up
24 the check on April 1, 2015. (Exh. 103.) Westlake Village Property, L.P. received a check for
25 \$604,826.10, which was the portion of surplus proceeds after the foreclosure trustee paid
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1 amounts required by Civil Code section 2924k. (Exh. 40.) After the foreclosure, Defendant
2 continued to try to collect more money from Westlake Village Property, L.P., that it claimed was
3 still owed. Specifically, Defendant claimed that it was owed default interest and attorney's fees
4 incurred after the foreclosure sale, due to the bankruptcy, evictions, legal actions, and unpaid
5 property tax.

6 Plaintiff's bankruptcy was dismissed on July 1, 2015. Defendant had postponed the
7 foreclosure sale on the Tustin Property 13 times. Each time the auctioneer "cried out" the
8 postponements and there was website publication of the continued sales, the last being on June
9 22, 2015. Defendant authorized the trustee to proceed with a non-judicial foreclosure sale on
10 the Tustin Property on July 22, 2015, because money was still owed by Plaintiff. The Tustin
11 Property was sold to Lido Holding Company.

12 **COURT'S FINDINGS**

13 The Court finds that the principle controverted issues are the following: (1) whether
14 Defendant remained the beneficiary under the Deed of Trust, recorded in the County of
15 Orange's Official Records on January 10, 2008 (document number 2008000015503) at the time
16 of the sale of the Tustin Property and had standing to foreclose on the Deed of Trust; (2) after
17 Plaintiff's default on the Mid-Wilshire LP January 7, 2008 Promissory Note ("Mid-Wilshire Note"),
18 was Defendant's inclusion of costs, attorney's fees, late fees, and interest to the original
19 principal loan amount and accrual of interest on that amount (specifically, maturity late fees,
20 compound interest, and excessive attorney's fees and costs) allowed under the Mid-Wilshire
21 Note and the law; (3) whether the doctrine of issue preclusion prevents Defendant from arguing
22 that the maturity late fees are legal; and (4) whether Plaintiff was excused from tendering.

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1 I. Defendant Was the Beneficiary Under the Deed of Trust of the Tustin Property at the
2 Time of the Foreclosure Sale

3 TomatoBank assigned Plaintiff's loans to Defendant when it sold the secured debt to
4 Defendant. The loans were evidenced by the promissory notes and secured by the deeds of
5 trust. The notes are assignable without notice to the borrowers. And, the borrowers can
6 generally raise no objection to assignment of the note and deed of trust, except on the grounds
7 that the assignment of the note and deed of trust was void. "The deed of trust, moreover is
8 inseparable from the note it secures, and follows it even without a separate assignment."
9 (*Yvanova v. New Century Mortgage Corporation* (2016) 51 Cal.4th 919, 927.) As the assignee
10 of Plaintiff's loan, Defendant became the beneficiary under the Deed of Trust, recorded on
11 January 10, 2008 (document number 2008000015503). Defendant was the beneficiary at the
12 time of the foreclosure sale of the Tustin Property and had standing to foreclose on the deed of
13 trust.

14 Plaintiff argues that when Defendant assigned the second deed of trust on the Thousand
15 Oaks Property to D-Day Capital, it was no longer the beneficiary of the deed of trust on the
16 Tustin Property. Plaintiff's argument is based upon an incorrect interpretation of the assignment
17 of the second deed of trust (Exh. 17). The second deed of trust was a cross-collateralization of
18 Plaintiff's loan. A beneficiary who has one note secured by two separate deeds of trust on two
19 parcels of property can non-judicially foreclose on either or both of the parcels successively in
20 any order. (Miller & Starr, Cal. Real Estate (4th ed. Sept. 2024 Update) § 13:213.) Similarly,
21 Defendant's assignment of the second deed of trust on that Thousand Oaks Property that also
22 secured Plaintiff's note, had no impact on Defendant's separate deed of trust on the Tustin
23 Property that also secured Plaintiff's note. No authority supports Plaintiff's argument.

24 Furthermore, the court finds credible Richards' testimony that Defendant orally assigned
25 to D-Day Capital a "limited and circumscribed right to payment" up to the amount which was
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1 paid by the foreclosure trustee on the promissory note that was executed with Plaintiff's loan.
2 Richards knew that an oral assignment of a note was valid and chose to proceed with an oral
3 assignment rather than a written assignment because it would cause less legal issues for
4 Defendant and D-Day Capital. His explanation is also credible. An oral assignment of a
5 promissory note is valid. (*Brown v. Patella* (1938) 24 Cal.App.2d 362, 363-364.) Because
6 Defendant did not assign D-Day Capital the entire promissory note and had only assigned a
7 limited and circumscribed right to payment, Defendant still had standing to enforce the
8 remainder of Plaintiff's promissory note that was secured by the deed of trust. (*Fontenot v.*
9 *Wells Fargo Bank* (2011) 198 Cal.App.4th 256, 270, overruled on other grounds by *Yvanova v.*
10 *New Century Mortgage Corp.*, *supra*, 62 Cal.4th at p. 939, fn. 13.)

11 II. Wrongful Foreclosure (First Cause of Action)

12 A wrongful foreclosure is a common law tort claim. (*Turner v. Seterus, Inc.* (2018) 27
13 Cal.App.5th 516, 525.) The elements of a wrongful foreclosure cause of action are (1) the
14 defendant caused a foreclosure sale of the plaintiff's real property under a power of sale in a
15 deed of trust; (2) the sale was wrongful because it was illegal, fraudulent, or willfully oppressive;
16 (3) the plaintiff tendered all amounts that were due under the loan secured by the deed of trust
17 or was excused from tendering all amounts that were due under the loan secured by the deed of
18 trust; (4) the plaintiff was not materially in breach of any other condition and had not failed to
19 perform any other material requirement of the loan agreement that would otherwise justify the
20 foreclosure; (5) the plaintiff was harmed; and (6) the defendant's actions were a substantial
21 factor in causing the plaintiff's harm. (CACI no. 4920; *Majd v. Bank of America, N.A.* (2015) 243
22 Cal.App.4th 1293, 1306-1307.) "[M]ere technical violations of the foreclosure process will not
23 give rise to a tort claim; the foreclosure must have been entirely unauthorized on the facts of the
24 case." (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 409.)

25 Nonjudicial foreclosure sales are presumed valid, and the party challenging the sale has the
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1 burden of pleading and proving both an improper procedure and resulting prejudice. (*Fontenot*
2 *v. Wells Fargo Bank, supra*, 198 Cal.App.4th at pp. 270, 272.)

3 A. Defendant Caused a Foreclosure Sale (First Element)

4 Here, the parties do not dispute that Defendant caused a foreclosure of Plaintiff's Tustin
5 Property under a power of sale in a deed of trust.

6 B. The Sale Was Not Wrongful (Second Element)

7 The second element of a wrongful foreclosure is that the defendant caused an illegal,
8 fraudulent, or willfully oppressive sale of real property. Plaintiff argues that the foreclosure sale
9 was illegal for three reasons: (1) there was no debt owed; (2) Plaintiff had paid all amounts set
10 forth in the notice of sale; and (3) Defendant lacked standing and did not have the power to
11 foreclose because it had assigned away its rights to D-Day Capital.

12 1. Plaintiff Has Not Proven That No Debt Was Owed

13 First, in claiming that no debt was owed, Plaintiff refers to what was owed on April 1,
14 2015. Plaintiff points to different documents that were all entitled "Loan Statement" around that
15 time and Defendant's response to request for admission no. 116. (See e.g., Exhs. 74, 126.)
16 Richards explained that these documents and other documents entitled "Loan Statement" for
17 the Westlake Village Property, L.P.'s loan, were not actually loan statements. (See, e.g., Exhs.
18 21, 71, at p. 2.) Rather, the documents were entitled loan statements due to a software that he
19 used to provide the items. The documents were modified to include whatever numbers were
20 needed, depending on the purpose of those documents. He pointed out that each of the "loan
21 statements" even had the disclaimer at the bottom of the page. The court finds that Richards'
22 explanation credible.

23 The fact that D-Day Capital received payment from the foreclosure of the Thousand
24 Oaks Property on April 1, 2015, is of no moment. Plaintiff did not attempt to exercise its right to
25 redemption at that time. Richards and Reynolds testified that interest and attorney's fees that
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1 were incurred after the foreclosure sale on February 19, 2015 were excluded from D-Day
2 Capital's surplus funds claim. In other words, debt was still owed on Plaintiff's loan, even on
3 April 1, 2015. This was corroborated by the response for request for admission no. 116.
4 Plaintiff argues that there was no debt owed because Defendant is collaterally estopped from
5 arguing that the maturity late fee was proper based on the decision by the Ventura County
6 Superior Court in *Dr. Leevil LLC v. Westlake Village Property* (case no. 56-2014-00450995
7 ["Ventura action"]). "The law of preclusion helps to ensure that a dispute resolved in one case is
8 not relitigated in a later case. Although the doctrine has ancient roots [citation], its contours and
9 associated terminology have evolved over time. We now refer to 'claim preclusion' rather than
10 'res judicata' [citation], and use 'issue preclusion' in place of 'direct or collateral estoppel'
11 [citations]." (*Samara v. Matar* (2018) 5 Cal.5th 322, 326.) "Claim and issue preclusion have
12 different requirements and effects." (*Ibid.*)

13 Claim preclusion "bar[s] relitigation of [a] claim altogether" where a second suit involves;
14 "(1) the same cause of action (2) between the same parties [or those in privity with them] (3)
15 after a final judgment on the merits in the first suit." (*DKN Holdings LLC v. Faerber* (2015) 61
16 Cal.4th 813, 824.) Unlike claim preclusion, issue preclusion does not bar entire causes of
17 action, but prevents relitigation of previously decided issues and can be raised by one who was
18 not a party or privy in the first suit. (*Ibid.*) "Issue preclusion prohibits the relitigation of issues
19 argued and decided in a previous case, even if the second suit raises different causes of action.
20 [Citation.] Under issue preclusion, the prior judgment conclusively resolves an issue actually
21 litigated and determined in the first action." (*Ibid.*) "[I]ssue preclusion applies (1) after final
22 adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit
23 and (4) asserted against one who was a party in the first suit or one in privity with that party."
24 (*Id.* at p. 825.) Even if these threshold requirements are satisfied, courts may consider the
25 public policies underlying issue preclusion in determining whether the doctrine should be
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1 applied. These policies include "conserving judicial resources and promoting judicial economy
2 by minimizing repetitive litigation, preventing inconsistent judgments which undermine the
3 integrity of the judicial system, and avoiding the harassment of parties through repeated
4 litigation." (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 879.)

5 Here, the Court took judicial notice of three documents filed in the Ventura action: (1)
6 first amended complaint filed on December 14, 2017; (2) November 29, 2018 Minute Order; and
7 (3) February 25, 2019 Minute Order. The Court also took judicial notice of the Court of Appeal
8 for the Second Appellate District, Division Six's July 16, 2020 unpublished opinion in *Dr. Leevil,*
9 *LLC v. Westlake Village Property L.P.* (case no. B296987). The Court can take judicial notice of
10 the existence of these documents, including the truth of results reached and the outcome of the
11 appeal. However, the court does not take judicial notice of the truth of the hearsay statements
12 in the rulings and the first amended complaint. (*Richtek USA, Inc. v. uPI Semiconductor Corp.*
13 (2015) 242 Cal.App.4th 651, 658; *Lindsey v. Conteh* (2017) 9 Cal.App.5th 1296, 1302, fn. 2.)

14 In connection with Plaintiff's argument of issue preclusion, Plaintiff requested judicial
15 notice of ten documents. (ROA 1252.) The Court already took judicial notice of exhibits 4, 6,
16 and 8 to the request for judicial notice. The Court also took judicial notice of part of exhibit 2 to
17 the request for judicial notice. The request for judicial notice is denied as irrelevant as to
18 exhibits 1, 3, 5, 9, and the remainder of exhibit 2. (*Ragland v. U.S. Bank National Assn.* (2012)
19 209 Cal.App.4th 182, 194 [noting that the court may take judicial notice of a recorded deed, but
20 declining to do so where deed was not relevant].) The request for judicial notice of the April 5,
21 2019 judgment in the Ventura action and the September 30, 2020 order from the California
22 Supreme Court denying the petition for review in case no. S264119 (exhibits 7 and 10 to the
23 request for judicial notice), is granted.

24 In the Ventura action, Defendant sought declaratory relief against Plaintiff and Westlake
25 Village Property L.P. in the fourteenth cause of action in the first amended complaint.
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1 Specifically, Defendant sought in relevant part: "Against Defendants Westlake L.P. and Mid-
2 Wilshire L.P. and DOES 61-70 for a judicial decree and declaration of the propriety of the
3 \$410,999.73 late charge and \$194,649.82 late charge assessed against Westlake L.P. and Mid-
4 Wilshire L.P., respectively on their unpaid principal balances at the time of maturity default."
5 (Ventura action, first amended complaint, at p. 33.) In its ruling on a motion for judgment on the
6 pleadings by Plaintiff, Westlake Village Property, L.P., Westlake Healthcare Center, Il Hie Lee,
7 and Jeoung Lee, the Ventura County Superior Court ruled that as to Plaintiff's note, "the late
8 charge provision does not apply to the final balloon payment, and were it to do so, the result
9 would be an unlawful penalty. (*Poseidon Development, Inc. v. Woodland Lane Estates LLC*
10 (2007) 152 Cal.App.4th 1106, 1116.)" (2/15/2019 Ventura action Minute Order.) Reviewing the
11 issue de novo, the Court of Appeal held that the maturity late fees were an unenforceable
12 penalty under Civil Code section 1671, subdivision (b) and affirmed the judgment entered in
13 favor of Plaintiff and Westlake Village Property, L.P. and against Defendant. (Req. for Jud. Not.,
14 Exh. 8; see Exh. 7, at p. 2.) Petition for review was denied. (Req. for Jud. Not., Exh. 10.)
15 Defendant argues that the issues are not identical. The Court agrees. Civil Code section 1671,
16 subdivision (b), provides that "a provision in a contract liquidating the damages for the breach of
17 the contract is valid unless the party seeking to invalidate the provision establishes that the
18 provision was unreasonable under the circumstances existing at the time the contract was
19 made." In the Ventura action, the parties in that action were litigating as to the validity of the
20 maturity late fees that were charged against Plaintiff. However, there is no evidence that
21 Plaintiff sought to invalidate the maturity late fees prior to, or at the time of the July 22, 2015
22 foreclosure sale. Thus, at the time of the foreclosure sale, the late charge and default
23 provisions in the promissory note were valid. (Civ. Code, § 1671, subd. (b); see Exh. 78, at p.
24 1.) Accordingly, issue preclusion is inapplicable.

1 Plaintiff also argues that Civil Code section 1916-2 prohibited Defendant from imposing
2 compound interest because it was not set forth in a signed writing. Defendant disputes that
3 compound interest was charged, and even if compound interest was charged, Defendant
4 argues that it was exempt from the requirement of a signed writing. Even assuming Defendant
5 charged compound interest, Defendant was exempt from Civil Code section 1916-2's
6 requirement. (Cal. Const., art. XV, § 1 [includes "successor in interest to any loan or
7 forbearance exempted under this article"]; *Wishnev v. The Northwestern Mutual Life Ins. Co.*
8 (2019) 8 Cal.5th 199, 218.) Plaintiff has not proven by a preponderance of the evidence that
9 any compound interest or not, was illegal. That there may have not been a contractual basis for
10 compound interest or not, is a distinct issue from being illegal. (*Wishnev v. The Northwestern*
11 *Mutual Life Ins. Co., supra*, 8 Cal.5th at p. 218, fn. 15.)

12 Plaintiff argues that the attorney's fees that were charged were improperly overcharged.
13 The joint list of controverted issues referred to Civil Code section 2924c and 2924d. However,
14 because the maturity date of the loan had already passed, these statutes do not apply. The
15 promissory note had a broad attorney's fees provision that stated: "Lender may hire or pay
16 someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that
17 amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and
18 Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses
19 for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or
20 injunction), and appeals. Borrower also will pay any court costs, in addition to all other sums
21 provided by law." (Exh. 78, at p. 2.) Plaintiff argues that this attorney's fees provision is limited
22 by an attorney's fees provision in the deed of trust that Plaintiff claims only allows Defendant to
23 recover attorney's fees and costs as the court may adjudge reasonable after trial. (PI's Trial
24 Brief, at p. 15.) This argument is unsupported by any authority and is unsupported by the full
25 attorney's fees provision of the deed of trust. That provision states: "If Lender institutes any suit
26

1 or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover
2 such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal.
3 Whether or not any court action is involved, and to the extent not prohibited by law, all
4 reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the
5 protection of its interest or the enforcement of its rights shall become a part of the indebtedness
6 payable on demand and shall bear interest at the Note rate from the date of the expenditure
7 until repaid. Expenses covered by this paragraph include, without limitation, however subject to
8 any limits under applicable law, Lender's attorney's fees and Lender's legal expenses, whether
9 or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings
10 (including efforts to modify or vacate any automatic stay or injunction), appeals, and any
11 anticipated post-judgment collection services, the costs of searching records, obtaining title
12 reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance,
13 and fees for the Trustee, to the extent permitted by applicable law. Trustor also will pay any
14 court costs, in addition to all other sums provided by law." (Exh. 79, at p. 6.)

15 Finally, Plaintiff argues that it should have been credited with the \$100,000 that was paid
16 while Jeoung Lee and Richards were negotiating a forbearance on the foreclosures. Plaintiff
17 has not proven that it is entitled to be credited with the \$100,000. Jeoung Lee's and Richards'
18 testimony seemed to indicate that the parties were negotiating forbearance on the foreclosure of
19 both properties. The reference on the cashier's check stated "Westlake Loan", not Mid-Wilshire
20 Loan. (Exh. 519.) When Defendant's bankruptcy counsel asked bankruptcy counsel for Plaintiff
21 and Westlake Village Property, L.P. to identify the payor of the check entitled to a return of the
22 funds (e.g., Plaintiff, Westlake Village Property, L.P., rents from the Tustin Property or
23 Thousand Oaks Property, or a non-debtor), Plaintiff's bankruptcy counsel declined to provide
24 that information. (Exhs. 245-246.) Moreover, the Court finds Richards' testimony credible that
25 he had to send a check for \$100,000 to the United States Treasury due to a levy on the funds
26

1 by the Internal Revenue Service that initially was as to the tax matter of Il Hie and Jeoung Lee,
2 but was ultimately for Westlake Health Care Center. (Exhs. 134, 135, 246, 295.) The reference
3 on the note section on the check matches the identifying number for Westlake Health Care
4 Center on the Notice of Levy. (Compare Exh. 134 with Exh. 135, at p. 9.) Accordingly, Plaintiff
5 has not proven that at the time of the foreclosure, that it owed no debt.

6 2. Plaintiff Was Not Entitled to Reinstatement

7 Relying upon Civil Code section 2924c, Plaintiff argues that because D-Day Capital
8 received surplus proceeds for \$4,747,135.28, Plaintiff had paid all amounts set forth in the
9 notice of trustee's sale. The notice of sale provided in relevant part: "The total amount of the
10 unpaid balance of the obligations secured by the property to be sold and reasonable estimated
11 costs, expenses and advances at the time of the initial publication of this Notice of Trustee's
12 Sale is estimated to be \$4,435,772.31 (Estimated). However prepayment premiums, accrued
13 interest and advances will increase this figure prior to sale." (Exh. 94B, at p. 3.) The
14 reinstatement provision in Civil Code section 2924c (as it was in 2015) is inapplicable because it
15 applied to loans that had not reached maturity. Here, the extended maturity date on Plaintiff's
16 loan had already passed. While reinstatement was unavailable, Plaintiff had the option to
17 exercise its right to redeem and preclude a foreclosure sale by paying all sums due by the terms
18 of the secured obligation. (See Miller & Starr, Cal. Real Estate (4th ed. Sept. 2024 Update) §
19 13:239.) Plaintiff has not shown that the sale was wrongful on this basis.

20 3. Standing

21 Plaintiff argued that the sale was wrongful because Defendant lacked standing and had
22 assigned away its rights to D-Day Capital, LLC. As previously discussed, the Court rejected this
23 argument. Accordingly, Plaintiff has not proven by a preponderance of the evidence that the
24 sale was wrongful.

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1 C. Tender or Excuse From Tender (Third Element)

2 The third element of a wrongful foreclosure cause of action is that the plaintiff tendered
3 the amount of the secured indebtedness or was excused from tendering. Plaintiff argues that
4 the surplus funds payment to D-Day Capital from the sale of the Thousand Oaks Property
5 constituted tender. "The third element – tender – requires the trustor to make 'an offer to pay the
6 full amount of the debt for which the property was security.'" (*Ram v. OneWest Bank, FSB*
7 (2015) 234 Cal.App.4th 1, 11.)

8 Here, the surplus funds payment from the Thousand Oaks Property cannot be
9 characterized as Plaintiff's tender of the full amount of debt. The Court questions whether
10 simply claiming that an underlying debt was invalid excuses tender. Nevertheless, Plaintiff
11 arguably was excused from tendering, in arguing that the underlying debt was not valid. (*Turner*
12 *v. Seterus, Inc., supra*, 27 Cal.App.5th at p. 526.)

13 D. Plaintiff Materially Breached Another Condition of the Loan Agreement (Fourth
14 Element)

15 Here, there is a split in authority as to whether Plaintiff must prove the fourth element of
16 a wrongful foreclosure cause of action or whether it is for Defendant to prove. (*Compare Turner*
17 *v. Seterus, Inc., supra*, 27 Cal.App.5th at p. 525 and *Majd v. Bank of America, N.A., supra*, 243
18 Cal.App.4th at pp. 1306-1307.) Defendant claims that Plaintiff was in material breach of the
19 loan agreement. Specifically, the loan agreement, promissory note, and deed of trust all defined
20 insolvency as an event of default. (Exh. 235, at pp. 3-4; Exh. 78, at p. 1; Exh. 79, at p. 4.)
21 Plaintiff had filed Chapter 11 bankruptcy. Accordingly, even if Plaintiff is not required to prove
22 this element, Defendant has proven that Plaintiff was in material breach of the loan agreement.

23 ///

24 ///

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1 E. Harm and Defendant's Actions Were Not a Substantial Factor in Causing
2 Plaintiff's Harm (Fifth and Sixth Elements)

3 Jeoung Lee testified that Plaintiff lost the Tustin Property from the foreclosure. Plaintiff
4 has not proven by a preponderance of the evidence that Defendant's actions were a substantial
5 factor in causing any of Plaintiff's harm. Plaintiff's property was foreclosed upon because
6 Plaintiff was unable to pay its loan obligations resulting in a foreclosure that Plaintiff has not
7 proven to be wrongful.

8 In conclusion, Plaintiff has not proven by a preponderance of the evidence its wrongful
9 foreclosure cause of action against Defendant.

10 III. Accounting

11 "An action for an accounting has two elements: (1) 'that a relationship exists between the
12 plaintiff and defendant that requires an accounting' and (2) 'that some balance is due the
13 plaintiff that can only be ascertained by an accounting.'" (*Sass v. Cohen* (2020) 10 Cal.5th 861,
14 869.) Here, Plaintiff has not proven by a preponderance of the evidence that a balance is due
15 to it from Defendant. Accordingly, Plaintiff has not proven its claim for an accounting.

16 Judgment is in favor of Defendant.

17 The Clerk is ordered to file this Statement of Decision and serve it upon all parties. The
18 Clerk is also ordered to serve the Judgment upon all parties.

19
20 Dated: 12/2/2024

21 
22 Deborah C. Servino
23 Judge of the Superior Court
24
25
26

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive Santa Ana, CA 92702	
SHORT TITLE: MID-WILSHIRE PROPERTY, L.P. vs. DR. LEEVIL, LLC	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: 30-2015-00801555-CU-OR-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Judgment dated 12/02/24, Minute Order dated 12/02/24 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 12/2/24. Following standard court practice the mailing will occur at Santa Ana, California on 12/2/24.

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Clerk of the Court, by: S. Valencia, Deputy

I certify that I am not a party to this cause. I certify that that the following document(s), Judgment dated 12/02/24, Minute Order dated 12/02/24, was transmitted electronically by an Orange County Superior Court email server on December 2, 2024, at 9:12:57 AM PST. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE