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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 1/4/2023 11:23 AM

2 **WELLS FARGO BANK, N.A.,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-40612

5 **WONG-LIN, INC. f/d/b/a LAMS**

6 **CHINESE RESTAURANT and**

7 **PHILLIP WONG,**

8 Defendants-Appellants.

9 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

10 **Beatrice J. Brickhouse, District Judge**

11 Snell & Wilmer L.L.P.

12 Gregory J. Marshall

13 Phoenix, AZ

14 Andrea M. Hicks

15 Denver, CO

16 for Appellee

17 Ferrance Law P.C.

18 David A. Ferrance

19 Albuquerque, NM

20 for Appellants

21 **MEMORANDUM OPINION**

22 **HANISEE, Chief Judge.**

23 {1} Defendants appeal the district court's order granting summary judgment in

24 favor of Plaintiff. Unpersuaded by Defendants' docketing statement, we issued a

1 notice proposing to summarily affirm. Defendants have responded to our notice with
2 a memorandum in opposition. After due consideration, we remain unpersuaded and
3 affirm.

4 {2} Defendants do not respond to the proposed holdings in our notice that the
5 affidavit attached to Plaintiff’s motion was properly admitted [CN 1-6] and that
6 Plaintiff sufficiently established grounds for standing. [CN 6-7] Thus, we consider
7 these matters abandoned and do not address them further. *See Taylor v. Van Winkle’s*
8 *Iga Farmer’s Mkt.*, 1996-NMCA-111, ¶ 5, 122 N.M. 486, 927 P.2d 41 (recognizing
9 that issues raised in a docketing statement, but not contested in a memorandum in
10 opposition, are abandoned).

11 {3} Defendants’ memorandum in opposition to our notice contends: (1)
12 statements made in the affidavit attached to Plaintiff’s motion are contradicted by
13 the very business records on which the affiant purported to rely, leaving a material
14 question of fact [MIO 2-3]; and (2) this Court improperly ruled in *Fed. Nat’l Mortg.*
15 *Ass’n v. Trissell*, 2022-NMCA-001, ¶ 2, 503 P.3d 381, *cert. denied* (S-1-SC-38867,
16 Dec. 22, 2021), that “in New Mexico, once a plaintiff-movant has made a prima
17 facie case on its claim alone, a defendant resisting summary judgment with an
18 affirmative defense has the burden of demonstrating a genuine issue of material fact
19 as to the defense.” [MIO 3-5]

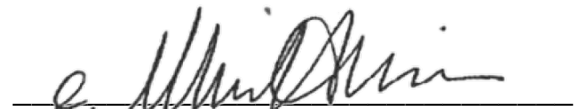
1 {4} We disagree with Defendants that the business records contradict statements
2 made in the affidavit of the loan adjustment manager. Rather, consistent with the
3 affidavit, the business records, when considered together, show: the existence of a
4 loan agreement between Plaintiff and Defendants [RP 51-67]; a bill and letter from
5 Plaintiff to Defendants indicating that Defendants defaulted on the loan; the loan
6 would not continue to be billed to Defendants monthly; and the full amount of the
7 loan was due [RP 68-71]. Thus, Defendants have not persuaded us that there is
8 conflict between the affidavit and the business records, such that a material fact issue
9 remains.

10 {5} To the extent that Defendants’ arguments ask us to reconsider our opinion in
11 *Trissell*, we decline the invitation to do so and emphasize that our New Mexico
12 Supreme Court denied certiorari review of our opinion. *See Trissell*, 2022-NMCA-
13 001. We also note that, in their memorandum in opposition, Defendants continue to
14 provide no information to identify any affirmative defenses they raised; Defendants
15 also explain neither how those defenses were properly supported nor how they
16 demonstrated a material fact issue, despite the admonition in our notice that such
17 omissions, alone, constitute adequate grounds for affirmance. [CN 4-5] “A party
18 responding to a summary calendar notice must come forward and specifically point
19 out errors of law and fact,” and the repetition of earlier arguments does not fulfill
20 this requirement. *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759

1 P.2d 1003, *superseded by statute on other grounds as stated in State v. Harris*, 2013-
2 NMCA-031, ¶ 3, 297 P.3d 374. For these reasons, Defendants do not persuade us
3 that they asserted affirmative defenses that would defeat summary judgment.

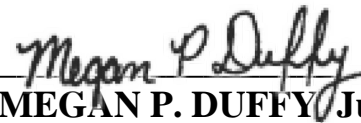
4 {6} Based on the foregoing analysis and the proposed analysis in our notice, we
5 affirm the district court's order granting summary judgment in favor of Plaintiff.

6 {7} **IT IS SO ORDERED.**

7
8 
J. MILES HANISEE, Chief Judge

9 **WE CONCUR:**

10 
11 **JENNIFER L. ATTKER, Judge**

12 
13 **MEGAN P. DUFFY, Judge**