Filed 8/22/13 Lopez v. Bank of America CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

HECTOR LOPEZ, Plaintiff and Appellant, v. BANK OF AMERICA, N.A. et al., Defendants and Respondents.	B244957 (Los Angeles County Super. Ct. No. BC480992)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

The Chang Firm and Randy Chang for Plaintiff and Appellant.

McGuireWoods, Joseph V. Quattrocchi and Leslie M. Werlin for Defendants and Respondents.

Hector Lopez appeals from the judgment entered after the trial court sustained without leave to amend the demurrer by Bank of America, N.A. and ReconTrust Company, N.A. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

Appellant owned property on Burgess Avenue in Whittier, California, since October 1991. However, after he fell behind on his loan payments to Bank of America, the property was sold in a trustee's sale by ReconTrust to Sovereign Ventures, Inc. The circumstances leading to the foreclosure were as follows.

In April 2010, appellant, a professional truck driver, sustained an injury to his wrist that caused him to miss work. He was current on his mortgage at the time. After his injury, appellant sought hardship assistance from Bank of America, which informed him that he could receive assistance if he was delinquent on his loan for 60 days.

In June 2010, appellant applied for a loan modification pursuant to the federal Home Affordable Modification Program (HAMP).[2] On June 28, 2010, he "provided financial information to [Bank of America] over the telephone. The agent of [Bank of America] ran the numbers on their system and [appellant] was informed that he qualified for assistance."

On July 20, 2010, appellant both faxed and sent via Federal Express the HAMP paperwork to Bank of America. On August 5, 2010, Bank of America confirmed via telephone that it had received the documents.

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[1] The facts are taken from the allegations of the second amended complaint, which we assume to be true. (*Wolkowitz v. Redland Ins. Co.* (2003) 112 Cal.App.4th 154, 161 (*Wolkowitz*).)

[2] "As authorized by Congress, the United States Department of the Treasury implemented the Home Affordable Mortgage Program (HAMP) to help homeowners avoid foreclosure during the housing market crisis of 2008. 'The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.' [Citation.]" (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 785 (*West*).)

On August 12, 2010, appellant called Bank of America to check on the status of his application, but he was told that there was no new information and was advised to call once a week. Appellant contacted Bank of America every week for two months.

In early October 2010, Bank of America informed appellant that he qualified for a loan modification and instructed him to contact them if he did not receive documentation within two weeks. On October 21, 2010, appellant called Bank of America and was told that "his file had been sent to underwriting for approval." The Bank of America representative, Angela in the Making Home Affordable Department, told appellant that if he did not receive anything from the bank by October 29, 2010, he should begin making trial payments of $1,600 on that date.

Appellant made a trial payment of $1,600 to Bank of America in October 2010 and continued to make monthly payments even though Bank of America never sent him the loan modification documents. He called Bank of America every month asking for the documents, but the bank's representatives told him to keep making payments and not worry about the paperwork.

On February 15, 2011, appellant contacted a Bank of America representative, Margaret, in the Home Retention Department. She told appellant that his modification had been declined because he had not sent some requested documents. Appellant explained that he had been calling every week and was never told that additional documents were needed. Margaret transferred appellant to a representative of the Decline Department, who told appellant they would investigate his allegations and instructed him to call back in a week.

On February 23, 2011, appellant called Bank of America and spoke with Julian in the Making Home Affordable Department. Julian transferred appellant to Donald in the Decline Department, who told appellant to call back with "updated

financials." Appellant gave updated financial information to Bank of America's Making Home Affordable Department on March 10, 2011. Bank of America did not tell appellant the modification or trial payment plan was canceled, so appellant made another $1,600 payment.

On March 27, 2011, appellant was told that he was "back in modification," even though Bank of America never sent any documentation to confirm the trial payment arrangement or modification plan. He alleged in his complaint that "everything was verbal, with the exception of [appellant] sending in monthly payments of $1,600.00." He contacted Bank of America weekly about the documentation, but he was repeatedly told not to worry.

In July and August 2011, appellant tried to make his monthly payments, but the payments were rejected. He was told that he was behind in his monthly mortgage payments. A Bank of America representative told appellant that they had sent him modification documents for his signature but he never returned them. Appellant stated that he had never received any documents from Bank of America regarding the modification or the trial payment plan.

Appellant contacted the Home Retention Department and asked for proof that the modification documents were delivered to his home. He was transferred to the Decline Department, which told him that another investigation would be conducted. The Decline Department subsequently told appellant that his appeal was valid and that no documents had been sent to him.

On September 6, 2011, appellant was asked to send more documents to complete the modification process. Bank of America threatened to sell the property in November 2011, but the sale was postponed because the modification process was almost complete and was "awaiting approval."

In November 2011, after Bank of America admitted that appellant's appeal was valid and that it had not sent him the modification documents, appellant was instructed to make another trial payment of $1,600, which he did. Appellant made two more $1,600 payments in December 2011 and January 2012. However, unbeknownst to appellant, ReconTrust sold his home in a trustee's sale on December 5, 2011, even though Bank of America continued to accept his mortgage payments. Sovereign Ventures purchased appellant's home in a foreclosure sale on December 5, 2011.

Appellant filed a complaint in March 2012 against Bank of America, ReconTrust, Sovereign Ventures, and five Does, asserting five causes of action. After respondents filed a demurrer, appellant filed a first amended verified complaint in May 2012. Respondents filed a demurrer to the first amended complaint. In June 2012, the trial court sustained the demurrer with leave to amend.

On July 10, 2012, appellant filed a second amended complaint, which is the operative complaint. Appellant asserted 10 causes of action: (1) breach of contract; (2) promissory estoppel; (3) cancellation of notice of default; (4) cancellation of trustee's deed upon sale; (5) intentional misrepresentation of fact; (6) negligent misrepresentation of fact; (7) quiet title; (8) slander of title; (9) fraudulent business practices; and (10) breach of the implied covenant of good faith and fair dealing. Respondents filed a demurrer, and appellant filed an opposition. Respondents also filed a request for judicial notice.

The documents filed with respondents' request for judicial notice included a notice of default filed by ReconTrust on July 11, 2011, which stated that appellant was $10,148.22 in arrears. The total outstanding balance was $362,430.64.

Respondents argued in their demurrer that appellant lacked standing to challenge the foreclosure because he did not allege tender of the outstanding debt.

On September 7, 2012, the trial court sustained respondents' demurrer without leave to amend. The court entered judgment in favor of Bank of America and ReconTrust.[3]

DISCUSSION

Appellant contends that the trial court erred in sustaining respondents' demurrer without leave to amend.

"On appeal from a judgment after a demurrer is sustained without leave to amend, we assume the truth of the facts alleged in the complaint, as well as those facts that reasonably can be inferred from those expressly pleaded, and the facts of which judicial notice can be taken. We determine de novo whether the complaint states facts sufficient to state a cause of action and does not disclose a complete defense. [Citations.] We affirm the judgment if it is correct on any ground stated in the demurrer, regardless of the trial court's stated reasons. [Citation.] [¶] It is an abuse of discretion to sustain a demurrer if there is a reasonable probability that the defect can be cured by amendment. [Citation.] The burden, however, is on the plaintiff to demonstrate how the complaint can be amended to state a valid cause of action. [Citation.]" (*Wolkowitz*, *supra*, 112 Cal.App.4th at pp. 161-162.) "'[S]uch a showing can be made for the first time to the reviewing court . . . .' [Citation.]" (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153-1154.)

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[3] Appellant states in his brief that he entered into a settlement agreement with Sovereign Ventures, which is not a party to this appeal.

I. *Tender Rule*

Respondents contend that, because appellant failed to allege tender, the trial court properly sustained their demurrer to the causes of action seeking to set aside the foreclosure sale, namely, cancellation of notice of default, cancellation of trustee's deed upon sale, quiet title, and slander of title. Appellant contends that the tender requirement does not apply because, on the facts alleged, it would be inequitable. We conclude that the facts alleged do not support an equitable exception to the tender rule.

"After a nonjudicial foreclosure sale has been completed, the traditional method by which the sale is challenged is a suit in equity to set aside the trustee's sale. [Citation.] Generally, a challenge to the validity of a trustee's sale is an attempt to have the sale set aside and to have the title restored. [Citation.]" (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 103 (*Lona*).)

"[T]he elements of an equitable cause of action to set aside a foreclosure sale are: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering. [Citations.]" (*Lona*, *supra*, 202 Cal.App.4th at p. 104.)

Appellant does not dispute respondents' argument that the complaint failed to allege tender. However, he contends that an exception applies, namely the exception that "a tender may not be required where it would be inequitable to impose such a condition on the party challenging the sale." (*Lona*, *supra*, 202 Cal.App.4th at p. 113.) He contends that this exception applies because: (1) he

was not in default at the time of the foreclosure sale; (2) he "acted in good faith and had a legitimate hardship"; (3) Bank of America received "federal bailouts in exchange for its promise to help those homeowners with legitimate hardship"; (4) he made the $1,600 monthly payments per Bank of America's instructions from October 2010 through January 2012, not knowing that respondents sold his home in December 2011; (5) Bank of America could not foreclose while he was under a trial payment plan pursuant to HAMP guidelines; (6) Bank of America breached HAMP guidelines by failing to convert appellant's trial payment plan into a permanent modification plan; (7) Bank of America intentionally delayed his request for a loan modification; and (8) Bank of America intentionally provided false grounds for the temporary denial of his modification request.

However, appellant's list of reasons why the equitable exception should apply is not accompanied by any citations to the record or supported by reasoned argument. Thus, for example, although he contends that he was not in default at the time of the foreclosure, we have been unable to find any factual allegations in the complaint to support that assertion. In fact, the complaint alleges that he "was current on his home mortgage at the time of the work accident" in April 2010, not at the time of the foreclosure, and the notice of default indicates that he was $10,148.22 in arrears as of July 8, 2011.

Similarly, appellant alleges that he made $1,600 monthly payments to Bank of America from October 2010 through January 2012, which is a total of $25,600. However, there is no indication of the amount that was actually due under his mortgage during that time period. We therefore have been unable to find anything in the record to support his argument that it would be inequitable to apply the tender rule based on his $1,600 monthly payments. "It is not the function of this court to comb the record looking for the evidence or absence of evidence to

support [a party's] argument. [Citations.]" (*People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866, 879.)

Moreover, the instant case is distinguishable from others in which the equitable exception has been applied. In *Humboldt Sav. Bank v. McCleverty* (1911) 161 Cal. 285, "the defendant's deceased husband borrowed $55,300 from the plaintiff bank secured by two pieces of property. The defendant had a $5,000 homestead on one of the properties. [Citation.] When the defendant's husband defaulted on the debt, the bank foreclosed on both properties. In response to the bank's argument that the defendant had to tender the entire debt as a condition precedent to having the sale set aside, the court held that it would be inequitable to require the defendant to 'pay, or offer to pay, a debt of $57,000, for which she is in no way liable' to attack the sale of her $5,000 homestead. [Citation.]" (*Lona, supra*, 202 Cal.App.4th at p. 113, fn. omitted.)

This case does not present the type of equity seen in *Humboldt*, in which the party seeking to have the sale set aside was not even liable for the debt. Here, appellant clearly was liable for the debt.

The equitable exception also was applied in *Onofrio v. Rice* (1997) 55 Cal.App.4th 413. In *Onofrio*, the plaintiff homeowner was in foreclosure and working to obtain new financing. She was approached by the defendants, a real estate broker specializing in foreclosure properties and his wife, who loaned the plaintiff money in exchange for a promissory note and deed of trust and subsequently bought the house at a foreclosure sale. The defendants' conduct violated a statutory scheme designed to protect homeowners from unscrupulous foreclosure consultants. (See *id.* at pp. 418-420.) In rejecting the defendants' argument that the plaintiff failed to tender the amount required to cure the default, the court stated that "'a tender may not be required where it would be inequitable

to do so.' [Citation.]" (*Id.* at p. 424.) The court further reasoned that "'when the person making the claim has a counter-claim or set-off against the beneficiary, . . . it is deemed that they offset each other, and if the offset is equal to or greater than the amount due, a tender is not required . . . . Also, if the action attacks the validity of the underlying debt, a tender is not required since it would constitute an affirmative of the debt.' [Citation.]" (*Ibid*.)

Unlike *Onofrio*, there are no allegations here that respondents violated a statutory scheme (other than HAMP, but, as discussed below, HAMP does not create private causes of action for borrowers) or that the underlying debt is invalid.

We thus conclude that appellant failed to allege tender or to allege circumstances to indicate that an exception to the tender rule applies. The trial court therefore properly sustained respondents' demurrer to the causes of action seeking to set aside the trustee's sale – cancellation of notice of default, cancellation of trustee's deed upon sale, quiet title, and slander of title.

II. *Breach of Contract*

A. *Third Party Beneficiary of HAMP*

Appellant's first cause of action was for breach of contract. He alleged, in part, that Bank of America breached the Servicer Participation Agreement (SPA) it entered into with the Federal National Mortgage Association (Fannie Mae) pursuant to HAMP, and contends that he is a third party beneficiary of the SPA between Bank of America and Fannie Mae.

However, the argument that homeowners are intended third party beneficiaries of HAMP contracts has been rejected by the majority of courts. (See *Bank of America, N.A. v. Roberts* (2013) 217 Cal.App.4th 1386, 1399 [HAMP "has been consistently construed to create no private rights or private causes of action

on the part of borrowers."]; see also, e.g., *Wigod v. Wells Fargo Bank, N.A.* (7th Cir. 2012) 673 F.3d 547, 559, fn. 4 [stating that courts have uniformly rejected claims of homeowners trying to assert rights arising under HAMP and citing cases].) We agree with the majority view that the HAMP agreement does not indicate an intent to grant such borrowers the right to enforce the agreement. We therefore conclude that appellant is not an intended third party beneficiary of the HAMP contract and so cannot bring a claim against respondents for breach of the contract between Bank of America and Fannie Mae.

B. *Statute of Frauds*

Appellant also alleged in the breach of contract claim that Bank of America made an oral contract for a trial period plan by asking him to make the trial period payments of $1,600. He alleged that Bank of America then breached the contract by failing to offer him a permanent modification after he made the trial payments. Appellant's claim that Bank of America breached an oral contract that would require it to forbear from foreclosure is barred by the statute of frauds.

"An agreement for the sale of real property or an interest in real property comes within the statute of frauds. (Civ. Code, § 1624, subd. (a)(3).) A mortgage or deed of trust also comes within the statute of frauds." (*Secrest v. Security National Mortgage Loan Trust 2002-2* (2008) 167 Cal.App.4th 544, 552 (*Secrest*).) "A contract coming within the statute of frauds is invalid unless it is memorialized by a writing subscribed by the party to be charged or by the party's agent. (Civ. Code, § 1624.) Under Civil Code section 1624, the party to be charged means '"the party to be charged in court with the performance to the obligation, i.e., the *defendant* in the action brought to enforce the contract."' [Citation.]" (*Ibid.*) "An

agreement to modify a contract that is subject to the statute of frauds is also subject to the statute of frauds. [Citations.]" (*Id.* at p. 553.)

In *Secrest*, the court held that a forbearance agreement in which a lender agreed to forbear from exercising its right to foreclose under a deed of trust was subject to the statute of frauds. (*Secrest, supra*, 167 Cal.App.4th at p. 547.) The court reasoned that, although the forbearance agreement did not create, renew, or extend the note and deed of trust, it was an agreement to surrender an interest in land. (*Id.* at p. 553.)

Secrest rejected the borrowers' argument that their making the down payment on the forbearance agreement constituted part performance sufficient to estop the lender from asserting the statute of frauds. (*Secrest, supra*, 167 Cal.App.4th at p. 555.) The court stated that "'[t]he payment of money is not "sufficient part performance to take an oral agreement out of the statute of frauds" [citation], for the party paying money "under an invalid contract . . . has an adequate remedy at law."' [Citations.]" (*Ibid.*) The court acknowledged the argument that the borrowers fully performed their obligations under the forbearance agreement by their payment. However, the court noted that "[t]he principle that full performance takes a contract out of the statute of frauds has been limited to the situation where performance consisted of conveying property, rendering personal services, or doing something other than payment of money." (*Id.* at p. 556.) Pursuant to *Secrest*, the statute of frauds bars appellant's breach of contract claim premised on an oral promise by Bank of America to forbear from foreclosure.[4]

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[4] Appellant attempts to rely on the exception to the statue of frauds in Civil Code section 1624, subdivision (b)(3), which provides that the statute does not apply if "[t]here is sufficient evidence that a contract has been made," such as evidence of electronic communication. This exception is not applicable here. The language of the statute

III. *Promissory Estoppel*

We also conclude that promissory estoppel does not apply to bar foreclosure on the facts alleged. "As a general rule, a gratuitous oral promise to postpone a foreclosure sale or to allow a borrower to delay monthly mortgage payments is unenforceable. [Citations.]" (*Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1039 (*Garcia*).) Such promises have, however, been relied upon as the basis for a promissory estoppel claim in the foreclosure context.

"'"The elements of a promissory estoppel claim are '(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance."' [Citation.]" (*Aceves v. U.S. Bank N.A.* (2011) 192 Cal.App.4th 218, 225 (*Aceves*).) Under promissory estoppel, "'a promisor is bound when he should reasonably expect a substantial change of position, either by act or forbearance, in reliance on his promise, if injustice can be avoided only by its enforcement.' [Citation.] '"The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted."' [Citation.]" (*Garcia*, *supra*, 183 Cal.App.4th at p. 1041.)

In the instant case, the complaint alleged that, in exchange for the monthly trial payments, Bank of America promised not to foreclose on appellant's property

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indicates that the exception applies only to an agreement described in subdivision (a)(1), "[a]n agreement that by its terms is not to be performed within a year from the making thereof." The agreement at issue here is subject to the statute of frauds as an agreement for the sale of real property under section 1624, subdivision (a)(3).

pending the approval of his permanent loan modification. But this alleged circumstance does not invoke promissory estoppel. Assuming that Bank of America's promise not to foreclose was clear and unambiguous, appellant has not sufficiently alleged detrimental reliance on the promise.

Appellant asserts that he relied to his detriment on Bank of America's promise by making the $1,600 trial payments. However, appellant had a pre-existing obligation to pay his mortgage, and he does not assert any way in which he changed his position, either by act or forbearance, in reliance on Bank of America's alleged promise. (See *Garcia*, *supra*, 183 Cal.App.4th at p. 1041 [holding that the plaintiffs' "actions in procuring a high cost, high interest loan by using other property they owned as security were sufficient to support detrimental reliance" for their promissory estoppel claim]; see also *Aceves*, *supra*, 192 Cal.App.4th at pp. 225, 231 [holding that the plaintiff adequately stated a claim for promissory estoppel based on her bank's promise to work with her on a loan reinstatement and modification if she would forgo further bankruptcy proceedings].) For example, the complaint does not assert that appellant would have pursued any other options, such as selling his home, retaining counsel earlier, or finding a co-signer for his home. (See *West*, *supra*, 214 Cal.App.4th at p. 805 [finding detrimental reliance where the complaint alleged that the plaintiff's reliance on the bank's alleged misrepresentations caused her not to take legal action to stop the trustee's sale and her brief claimed that she would have pursued other options if she had not relied on the misrepresentations].)

Appellant did not explain in his opening brief how he would amend the complaint to support his promissory estoppel cause of action, and he did not file a reply brief. (See *Wolkowitz*, *supra*, 112 Cal.App.4th at pp. 161-162 [burden is on the plaintiff to explain how the complaint can be amended to state a valid cause of

action].) At oral argument, he expressly disclaimed any intent to state a cause of action for promissory estoppel seeking damages for the $1,600 trial payments he made in reliance on Bank of America's alleged promise not to foreclose. Instead, he suggested that he could state a promissory estoppel claim for damages resulting from the foreclosure itself, on the theory that he might have had sufficient funds to bring his loan current before the foreclosure occurred. He referred to a "401K" account that held funds that would have enabled him to do so. No such reference was made in the briefing on appeal or, insofar as the record shows, in the trial court proceedings. He failed to articulate precisely how he could amend the complaint so as to meet each element of promissory estoppel, those elements being: (1) a promise that is clear and unambiguous in its terms, (2) a reasonable expectation on the part of the promisor that the promise will induce action or forbearance on the part of the promisee or a third person, (3) the promise induces action or forbearance by the promisee or a third person (sometimes called "detrimental reliance"), and (4) injustice can be avoided only by enforcement of the promise. (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 310; see Rest.2d Contracts, § 90, subd. (1).) We conclude that appellant failed to meet his burden to demonstrate the manner in which he could amend the complaint so as to change the legal effect of his pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Hence, he is not entitled to another opportunity to amend.

IV. *Fraudulent Business Practices*

Appellant's ninth cause of action asserts that respondents violated Business and Professions Code section 17200. "'The "unlawful" practices prohibited by section 17200 are any practices forbidden by law, be it civil or criminal, federal,

state, or municipal, statutory, regulatory, or court-made. [Citation.]" (*Olsen v. Breeze, Inc.* (1996) 48 Cal.App.4th 608, 617-618.) But appellant's complaint does not assert any specific laws that were violated by respondents' conduct, instead generally asserting that their "acts were in violations of [appellant's] rights under California law and were likely to deceive the public and did deceive [appellant], and were unlawful, unfair or fraudulent business acts or practices under Business and Professions Code section 17200." Absent reference to specific laws that were violated, the complaint fails to sufficiently allege a cause of action for fraudulent business practices.

V. *Breach of Implied Covenant of Good Faith and Fair Dealing*

Appellant's tenth cause of action alleges breach of the implied covenant of good faith and fair dealing. "The implied covenant of good faith and fair dealing is a contractual relationship and does not give rise to an independent duty of care. Rather, '"[t]he implied covenant of good faith and fair dealing is limited to assuring compliance with the *express terms* of the contract, and cannot be extended to create obligations not contemplated by the contract."' [Citation.]" (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 206.) "'The covenant thus cannot "'be endowed with an existence independent of its contractual underpinnings.'" [Citation.] It cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement.' [Citation.] The 'covenant is implied as a supplement to the express contractual covenants, to prevent a contracting party from engaging in conduct that frustrates the other party's rights to the benefits of the agreement.' [Citation.]" (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1369.)

The complaint does not contain specific allegations to support the assertion that respondents engaged in conduct that frustrated their rights under their Deed of Trust. The complaint generally states that, "[a]s a proximate cause of [respondents'] actions as herein alleged, [respondents] breached their implicit covenant of good faith and fair dealing contained in the Deed of Trust." Appellant's other allegations pertaining to this cause of action are based on Bank of America's obligations under its SPA. As discussed above, appellant is not a third party beneficiary of the SPA.

VI. *Leave to Amend*

Appellant fails to demonstrate how he can cure the foregoing fatal deficiencies in his complaint. Therefore, the trial court did not abuse its discretion in sustaining respondents' demurrer without leave to amend.[5]

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[5] Appellant did not raise in his brief the trial court's order sustaining the demurrer as to his intentional and negligent misrepresentation claims and therefore has forfeited them. "[I]ssues and arguments not addressed in the briefs on appeal are deemed forfeited. [Citations.]" (*Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 19, fn. 12.)

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.