Filed 11/21/19 Charles v. U.S. Bank, N.A. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

LANCE A. CHARLES, SR., et al., Plaintiffs and Appellants, v. U.S. BANK, N.A., as Trustee, etc., et al., Defendants and Respondents.	B294815 (Los Angeles County Super. Ct. No. EC067437/18PDUD00200)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ralph C. Hofer, Judge. Affirmed.

Koebel Law Offices and Philip E. Koebel for Plaintiffs and Appellants.

Reed Smith, Abraham J. Colman, Priscilla Szeto and Zachary C. Frampton for Defendant and Respondent U.S. Bank.

Shapiro, Van Ess, Sherman & Marth and Darlene P. Hernandez for Defendant and Respondent Aztec Foreclosure Corporation.

INTRODUCTION

Plaintiffs Lance A. Charles, Sr., and Ollie M. Charles sued U.S. Bank[1] and Aztec Foreclosure Corporation alleging wrongful foreclosure of plaintiffs' home. Plaintiffs alleged that when the deed of trust for their 2006 mortgage was assigned to defendants in 2016, the assignment was defective because it assigned only the deed of trust, and not the note. Plaintiffs alleged that the assignment was void as a result, so defendants did not have the authority to foreclose.

The superior court sustained defendants' demurrers, and we affirm. No legal authority supports plaintiffs' theory that the assignment of a deed of trust without language specifically acknowledging the note renders the assignment void. Moreover, California law does not require that a foreclosing party be in possession of the note.

FACTUAL AND PROCEDURAL BACKGROUND

A. Facts

The facts of this case are largely undisputed. The following facts were included in the amended complaint and documents the trial court judicially noticed.

Plaintiffs, a married couple, purchased a residence in Pasadena in 1972. In 2006, they took out a mortgage on the

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[1] The full name of the defendant is U.S. Bank, National Association, as Trustee for MASTR Adjustable Rate Mortgages Trust 2006-OA2 Mortgage Pass-Through Certificates, Series 2001-OA2.

home with Countrywide Bank for $535,200.00. The 2006 deed of trust stated that Countrywide Bank was the lender; ReconTrust Company, N.A. was the trustee; and Mortgage Electronic Registration Systems, Inc. (MERS) "is the beneficiary under this Security Instrument."

In an assignment of deed of trust recorded in February 2012, MERS assigned to Bank of America, N.A., "successor by merger" to Countrywide, "all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described." In September 2013, Bank of America assigned to Nationstar Mortgage LLC "all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described."

In June 2016, Nationstar assigned to U.S. Bank "all its interest in that certain Deed of Trust dated 9/26/2006." As discussed below, plaintiffs challenge the validity of this assignment because it referenced only the deed of trust, and not the note. Shortly thereafter, U.S. Bank substituted Aztec Foreclosure Corporation as successor trustee.

Defendants contend that plaintiffs defaulted on the mortgage in 2012. In July 2016, Aztec recorded a notice of default and election to sell. On November 30, 2016, Aztec filed a notice of trustee's sale set for January 4, 2017. The sale was apparently postponed. On December 12, 2017, Aztec recorded a trustee's deed upon sale stating that U.S. Bank had purchased the property for $722,376.12.

B. Plaintiffs' allegations

Plaintiffs filed a complaint against U.S. Bank and Aztec on December 22, 2017. U.S. Bank filed a motion for judgment on the pleadings in March 2018. The trial court granted the motion, and

granted plaintiffs leave to amend the complaint. Because only the amended complaint is at issue on appeal, we summarize the allegations of that pleading.

In the amended complaint, plaintiffs asserted three causes of action: wrongful foreclosure, "unfair competition law violations against elderly persons," and quiet title. They asked the court to set aside the December 2017 foreclosure sale because the foreclosure process was not initiated by "'the holder of the beneficial interest under the mortgage.'" (Quoting Civil Code, § 2924, subd. (a)(6).)[2] Plaintiffs alleged that the 2016 assignment was void because "an assignment of deed of trust is only valid . . . when the assignment instrument indicates that the security is assigned TOGETHER WITH the note (i.e. the underlying debt obligation). The assignment of security without the assignment of the debt which is secured is a legal nullity." Plaintiffs alleged that because the note was not assigned, the 2016 assignment to U.S. Bank was void, and U.S. Bank's assignment of rights to Aztec was void. As such, the notice of default and notice of trustee's sale were "false instruments," and "[b]ecuase Aztec was without authority to conduct the auction, the 2017 [foreclosure sale] was void." The resulting trustee's deed upon sale was also a "false instrument."

Plaintiffs further alleged that defendants "violated California's laws protecting consumers from unfair competition." They asserted that the foreclosure sale was a "sham auction" and was unlawful, fraudulent, and unfair under Business and Professions Code section 17200, et seq. Plaintiffs also requested that the court issue an order quieting title to the residence.

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[2] All further statutory references are to the Civil Code unless otherwise indicated.

Plaintiffs asserted that because defendants were "not entitled to enforce the 2006 mortgage at all," plaintiffs' "actual property loss from the wrongful foreclosure is at least the value of $772,376.12 that was bid at the foreclosure auction." Plaintiffs also requested punitive damages and attorney fees.

C. Demurrer

U.S. Bank demurred to the amended complaint on the grounds that the amended complaint failed to state facts sufficient to establish a cause of action, and the causes of action were uncertain. (Code Civ. Proc., § 430.10, subds. (e), (f).) U.S. Bank noted that the court had granted the previous motion for judgment on the pleadings on the basis that plaintiffs' causes of action were "based on the theory that the foreclosing party did not have a beneficial interest in or physical possession of the note, [which] is not a theory recognized as valid." U.S. Bank contended that plaintiffs' claims in the amended complaint were based on the same theory, which contradicted the "clear authority rejecting the 'splitting the note' theory as a method for defaulting borrowers to delay foreclosure." U.S. Bank stated, "California law simply does not require a foreclosing entity to have an interest in both the deed of trust and the underlying promissory note to initiate and proceed with foreclosure."

Noting the previous ruling on the motion for judgment on the pleadings, U.S. Bank requested that leave to amend be denied. U.S. Bank requested judicial notice of the 2013 assignment, the 2016 assignment, the 2016 substitution of trustee, the 2017 trustee's deed upon sale, and a 2018 corrective trustee's deed upon sale. Aztec filed a joinder to the demurrer.

Plaintiffs opposed the demurrer. They relied on *Yvanova v. New Century Mortgage Corp*. (2016) 62 Cal.4th 919, 924

(*Yvanova*), which held that "a borrower who has suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment." The court stated that "only the original beneficiary of a deed of trust or its assignee or agent may direct the trustee to sell the property, [so] an allegation that the assignment was void . . . will support an action for wrongful foreclosure." (*Yvanova*, *supra*, at p. 923.) *Yvanova* noted that a deed of trust "is inseparable from the note it secures, and follows it even without a separate assignment." (*Id*. at p. 927.) Plaintiffs asserted, "Inversely, the assignment of security without the assignment of the debt which is secured is a legal nullity." Plaintiffs contended that the 2016 assignment "omitted the 'magic words' and made no reference whatsoever to the debt or obligations under the 2006 Note," and was therefore void.

There is no hearing transcript in the record on appeal. In a 15-page written order, the court granted judicial notice of the documents requested by U.S. Bank and sustained the demurrer without leave to amend. The court rejected plaintiffs' reliance on *Yvanova*, stating, "It does not appear that *Yvanova* had the effect of recognizing that an assignment could be recognized as void ab initio where, as here, it expressly assigned the deed of trust and 'all [the assignee's] interest under' the deed of trust, but did not expressly mention the note." The court acknowledged *Yvanova*'s holding that only the beneficial holder of the deed of trust can complete a valid foreclosure sale, but stated that neither the case law nor applicable statutes required a party to have a beneficial interest in both the note and the deed of trust. The court therefore sustained the demurrer without leave to amend.

The court entered judgment in favor of U.S. Bank on September 18, 2018. Plaintiffs asked the court to amend the judgment to include Aztec, which had joined U.S. Bank's demurrer. The court entered an amended judgment that included Aztec on December 19, 2018. Plaintiffs timely appealed.

DISCUSSION

A. Standard of review

Plaintiffs assert that the demurrer should have been overruled because they adequately alleged facts showing that the 2016 assignment of the deed of trust was void because it failed to simultaneously assign the note. Plaintiffs repeatedly state that the 2016 assignment was void, with statements such as, "[A]ssignment of the Deed of Trust without the Note is a legal nullity"; "black-letter law holds that the assignment of a security without the assignment of the debt it secures is a legal nullity"; and "the 2016 Assignment only assigned the deed of trust, which is a legal nullity and void." Plaintiffs rely on authorities that address various peripheral issues relating to which parties can foreclose and who has standing to challenge a foreclosure. However, none of these authorities support plaintiffs' ultimate theory that the 2016 transfer of the deed of trust to U.S. Bank was void as a matter of law.

"The standard by which we review an order sustaining a demurrer without leave to amend is well established. We review the order de novo, exercising our independent judgment on whether the complaint states a cause of action as a matter of law." (*Lo v. Lee* (2018) 24 Cal.App.5th 1065, 1070.) "We treat the demurrer as admitting all material facts properly pleaded." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 810 ["We

are required to assume the truth of plaintiff's *factual allegations*, not her *legal conclusions*."].) Here, if the allegations and the judicially noticed documents do not support plaintiffs' legal conclusion that the assignment was void, then no viable cause of action has been stated and the demurrer was properly sustained.

B. Plaintiffs' legal theory is not supported.

"A nonjudicial foreclosure sale is a 'quick, inexpensive[,] and efficient remedy against a defaulting debtor/trustor.' [Citation.] To preserve this remedy for beneficiaries while protecting the rights of borrowers, 'sections 2924 through 2924k provide a comprehensive framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust.'" (*Brown v. Deutsche Bank National Trust Co.* (2016) 247 Cal.App.4th 275, 280.) This nonjudicial foreclosure statutory scheme "'cover[s] every aspect of exercise of the power of sale contained in a deed of trust.'" (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1154.)

Plaintiffs assert that the trial court erred by "adopt[ing] Respondents' canard that California's nonjudicial foreclosure statutory scheme does not require possession of the note to foreclose." This is no canard, it is the law: "[T]he procedures to be followed in a nonjudicial foreclosure . . . do not require that the note be in the possession of the party initiating the foreclosure." (*Debrunner v. Deutsche Bank National Trust Co.* (2012) 204 Cal.App.4th 433, 440 (*Debrunner*); see also *Shuster v. BAC Home Loans Servicing, LP* (2012) 211 Cal.App.4th 505, 511 ["California's statutory nonjudicial foreclosure . . . does not require that the foreclosing party have a beneficial interest in or physical possession of the note."]; *Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1004 ["Given the exhaustive nature of the

nonjudicial foreclosure scheme, we decline to read additional requirements into the non-judicial foreclosure statute requiring the note and the deed of trust to be held by the same party."].)[3]

Moreover, the applicable statute states that the entities authorized to initiate the foreclosure process are "the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest." (§ 2924, subd. (a)(6).) These parties may only act "within the scope of authority designated by the holder of the beneficial interest." (*Ibid.*) As the Supreme Court stated in *Yvanova, supra,* 62 Cal.4th 919, the holder of the deed of trust may initiate a foreclosure, even if that entity does not also hold the note: "The trustee of a deed of trust . . . acts merely as an agent for the borrower-trustor and lender-beneficiary. [Citations.] While it is the trustee who formally initiates the nonjudicial foreclosure, by recording first a notice of default and then a notice of sale, the trustee may take these steps only at the direction of the person or entity that currently holds the note and the beneficial interest under the deed of trust—the original beneficiary or its assignee—or that entity's agent." (*Yvanova, supra*, 62 Cal.4th at p. 927.)

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[3] Plaintiffs challenge this statement of law as it is stated in *Debrunner*, which was an action to stop an impending foreclosure, rather than an action to reverse a foreclosure sale. Plaintiffs also assert that *Yvanova* renders the holding in *Debrunner* suspect. Neither argument is compelling, as multiple cases have held that physical possession of a note is not required for foreclosure (see, e.g., *Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 42, and cases cited therein), and *Yvanova* did not address that issue.

Plaintiffs rely heavily on *Yvanova* for its statements that only an entity currently entitled to enforce a debt may foreclose—a proposition defendants do not dispute. In *Yvanova*, the plaintiff executed a deed of trust securing a note on a residential property in 2006. (*Id*. at p. 924.) The lender and beneficiary of the deed of trust assigned the deed of trust in 2011. (*Id*. at pp. 924-925.) In 2012, one of the defendants filed a notice of substitution of trustee and notice of trustee's sale; the property was later sold. (*Id*. at p. 925.) The plaintiff sued to quiet title on the property, alleging that the 2011 assignment was void. (*Ibid*.) The trial court sustained the demurrer, and the Court of Appeal affirmed, holding that the plaintiff was not a party to the assignment, and therefore had no standing to assert any deficiencies in the assignment. (*Id*. at p. 926.) The Supreme Court granted review, and made clear that its consideration was limited to the following question: "'In an action for wrongful foreclosure on a deed of trust securing a home loan, does the borrower have standing to challenge an assignment of the note and deed of trust on the basis of defects allegedly rendering the assignment void?'" (*Ibid*.)

The Supreme Court discussed the nonjudicial foreclosure procedure, in which a trustee initiates the foreclosure "at the direction of the person or entity that currently holds the note and the beneficial interest under the deed of trust." (*Yvanova, supra*, 62 Cal.4th at 927.) The court stated, "A promissory note is a negotiable instrument the lender may sell without notice to the borrower. [Citation.] The deed of trust, moreover, is inseparable from the note it secures, and follows it even without a separate assignment." (*Ibid.*) The court also observed, "[O]nly the current beneficiary may direct the trustee to undertake the nonjudicial foreclosure process. '[O]nly the "true owner" or "beneficial

holder" of a Deed of Trust can bring to completion a nonjudicial foreclosure under California law.'" (*Id.* at pp. 927-928.)

The court held that the plaintiff did have standing to challenge the assignment: "[A] plaintiff in Yvanova's position is not asserting the interests of parties to the assignment; she is asserting her own interest in limiting foreclosure on her property to those with legal authority to order a foreclosure sale." (*Yvanova, supra*, 62 Cal.4th at pp. 936-937.) Thus, the court concluded, "a home loan borrower has standing to claim a nonjudicial foreclosure was wrongful because an assignment by which the foreclosing party purportedly took a beneficial interest in the deed of trust was not merely voidable but void, depriving the foreclosing party of any legitimate authority to order a trustee's sale." (*Id.* at pp. 942-943.) The court made clear that its holding was limited to standing: "We express no opinion on whether plaintiff has alleged facts showing a void assignment, or on any other issue relevant to her ability to state a claim for wrongful foreclosure." (*Id.* at p. 943.)

According to plaintiffs, "under *Yvanova*, demurrer may not be sustained where plaintiffs allege [a] void assignment," because only an entity currently entitled to enforce a debt may foreclose on that debt. However, while *Yvanova* acknowledges a home loan borrower's standing to assert a cause of action based on the foreclosing party's lack of authority, it does not support the proposition that *any* allegation of a void assignment is sufficient to withstand demurrer. To the contrary, if the facts alleged do not support a finding that the assignment was void, plaintiffs have failed to state a valid cause of action under the reasoning of *Yvanova*.

Plaintiffs acknowledge *Yvanova*'s statement that a "deed of trust . . . is inseparable from the note it secures, and follows it even without a separate assignment." (*Yvanova, supra*, 62 Cal.4th at 927.) They contend that the reverse is not true, and that there is no support for the contention that the note follows the deed of trust without a separate assignment. Defendants, on the other hand, assert that there is no authority supporting plaintiffs' theory that transfer of a deed without the note is void, and that the comprehensive statutory scheme involving nonjudicial foreclosures leaves no room for judicial interpretation of such a requirement. The authorities support defendants' position. (See, e.g., *Gomes v. Countrywide Home Loans, Inc.*, *supra,* 192 Cal.App.4th at p. 1154 ["'Because of the exhaustive nature of this scheme, California appellate courts have refused to read any additional requirements into the non-judicial foreclosure statute.'"].)

In addition, plaintiffs rely on a United States Supreme Court case from nearly 150 years ago, *Carpenter v. Longan* (1872) 83 U.S. 271. That case states, "All the authorities agree that the debt is the principal thing and the mortgage an accessory. . . . The mortgage can have no separate existence. When the note is paid the mortgage expires. It cannot survive for a moment the debt which the note represents. This dependent and incidental relation is the controlling consideration, and takes the case out of the rule applied to choses in action, where no such relation of dependence exists. *Accessorium non ducit, sequitur principale*." (*Id*. at pp. 275-276.) Plaintiffs argue that this case supports their assertion that "assignment of the Deed of Trust without the Note is a legal nullity." We disagree with this interpretation of *Carpenter*, which has no bearing on whether an assignment of a

deed of trust is void under California's nonjudicial foreclosure law if the assignment did not also include language regarding the note. As discussed above, a notice of default may be filed by the "trustee, mortgagee, or beneficiary, or any of their authorized agents." (§ 2924, subd. (a)(1); see also subd. (a)(6).) It is not limited to those holding the note.

Plaintiffs also rely on *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552 (*Sciarratta*), calling it "a case with similar facts as this action." However, *Sciarratta* addressed the element of harm in a wrongful foreclosure action, not the validity of assignments. In that case, "Deutsche Bank was the owner of Sciarratta's loan and beneficiary of the deed of trust according to the public record at the time of this foreclosure. But Deutsche Bank did not foreclose. Bank of America did." (*Id.* at p. 556.) The holder of the original note and deed of trust, Chase, assigned them to Deutsche Bank in April 2009; in November 2009, Chase purported to assign the same notes and deed of trust to Bank of America. (*Id.* at p. 557.) After Bank of America foreclosed, the plaintiff sued. The trial court sustained the defendants' demurrer on the basis that the plaintiff could not establish harm by having the wrong entity foreclose, since she did not dispute that she had defaulted on her mortgage and was subject to foreclosure. (*Id.* at p. 561.)

The Court of Appeal made clear in *Sciarratta* that it was addressing only the element of harm: "This case presents the question of 'prejudice' left open in *Yvanova*: Where a homeowner alleges foreclosure by one with no right to do so, do such allegations alone establish the requisite prejudice or harm necessary to state a cause of action for wrongful foreclosure?" (*Sciaratta, supra*, 247 Cal.App.4th at p. 555.) The court held that

such allegations were sufficient, and a plaintiff was not required to allege additional harm to state a viable cause of action for wrongful foreclosure. (*Ibid.*) Here, by contrast, the issue is whether plaintiffs have alleged facts to support a finding that the 2016 assignment was void—not whether plaintiffs have adequately alleged harm. *Sciarratta* is therefore not instructive.

Plaintiffs also cite section 2924, subdivision (a)(6), which states in part, "No entity shall record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest." Again, this statement does not support plaintiffs' contention that the assignment of the deed of trust, without language assigning the note, rendered the 2016 assignment void. Section 2924 does not address assignments of deeds of trust, or speak to U.S. Bank's or Aztec's authority to foreclose under the facts alleged here.

Finally, plaintiffs contend that U.S. Bank and Aztec "made no showing of evidence, and made no argument, that they had properly acquired the note as a valid assignee or in any other way became its beneficiary." They assert that "the party asserting rights under an assignment has the burden to prove the assignment by clear and positive evidence." However, in order to prevail on appeal from an order sustaining a demurrer, a plaintiff "must show that the facts pleaded are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer." (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047,

1052.) There is no burden on the defendants to produce evidence or otherwise prove any facts to support a demurrer.

C. Plaintiffs' alternative argument regarding late assignment to a trust is not supported by any alleged facts or law.

Plaintiffs assert in their opening brief that they also offered an alternative theory that U.S. Bank "admits to not acquiring the 2006 mortgage until 2016 even though it presumably closed to new mortgages in 2006 or 2007." The brief does not cite the record from the trial court or otherwise specify where this argument was asserted. However, we note that plaintiffs' amended complaint included a short section with an "alternative" argument, in which plaintiffs stated that "a late assignment into a securitized trust is void not voidable" under *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079 (*Glaski*). On appeal, plaintiffs assert that "[t]hese are unique facts that have not been presented before to California's appellate branch," and "[a]t a minimum, the trial court should have granted leave to amend."

Plaintiffs' "alternative theory of void assignment" in the amended complaint is very brief, and the gist of it is not entirely clear. It appears plaintiffs intended to allege a theory similar to that in *Glaski*, in which the plaintiffs alleged that the transfer of a deed of trust into a trust was void based on the terms of the trust: "Glaski specifically alleges JP Morgan's attempted assignment of the deed of trust to the WaMu Securitized Trust in June 2009 occurred long after the WaMu Securitized Trust closed (i.e., 90 days after Dec. 21, 2005)." (*Glaski, supra*, 218 Cal.App.4th at p. 1096.) The court concluded that under New York law, "Because the WaMu Securitized Trust was created by the pooling and servicing agreement and that agreement

establishes a closing date after which the trust may no longer accept loans, this statutory provision provides a legal basis for concluding that the trustee's attempt to accept a loan after the closing date would be void as an act in contravention of the trust document." (*Ibid*.)

Here, plaintiffs have not alleged any facts supporting such a theory. For example, they did not allege that any trust language barred the transfer in 2016, or that such a trust would be governed by the New York laws interpreted in *Glaski*. As such, plaintiffs have not alleged facts sufficient to state a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

In addition, U.S. Bank points out that *Glaski*'s reasoning has been widely rejected. (See, e.g., *Yhudai v. IMPAC Funding Corp*. (2016) 1 Cal.App.5th 1252, 1259 ["the decision upon which *Glaski* relied for its understanding of New York law [*Wells Fargo Bank, N.A. v. Erobobo* (N.Y.Sup.Ct. 2013) 39 Misc.3d 1220(A)] has not only been reversed, but soundly and overwhelmingly rejected"]; *Rajamin v. Deutsche Bank Nat. Trust Co*. (2d Cir. 2014) 757 F.3d 79, 90 [rejecting *Glaski*'s interpretation of the New York statute and finding that "unauthorized acts of a trustee . . . are not void but voidable"]; *Morgan v. Aurora Loan Services, LLC* (9th Cir. 2016) 646 Fed.Appx. 546, 550 ["because an act in violation of a trust agreement is voidable—not void—under New York law . . . Morgan lacks standing" under *Yvanova*].) This case does not present a compelling reason to depart from the overwhelming weight of authority on this issue.

Because each of the causes of action in plaintiffs' amended complaint relied on their allegation that the 2016 transfer was void, and this theory is not supported by law, the demurrer was appropriately sustained. Plaintiffs have not demonstrated that

their complaint could be amended to allege a viable cause of action, and therefore leave to amend was appropriately denied. (*Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 726 [leave to amend should be denied where amendment would be futile].) We therefore do not address the parties' additional arguments specific to the individual causes of action.[4]

DISPOSITION

The judgment is affirmed. U.S. Bank and Aztec are entitled to recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.

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[4] In its joinder to U.S. Bank's respondent's brief, Aztec argues that Aztec's actions were protected by privilege under section 47. It does not appear that Aztec asserted this argument in the superior court, and the court did not sustain the demurrer on this basis. "As a general rule, issues not raised in the trial court cannot be asserted for the first time on appeal." (*Peterson v. John Crane, Inc.* (2007) 154 Cal.App.4th 498, 515.) We therefore do not address this argument.