Filed 6/6/16 Crey v. HSBC Bank USA CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

KEVIN CREY et al., Plaintiffs and Appellants, v. HSBC BANK USA, N.A. et al., Defendants and Respondents.	B264732 (Los Angeles County Super. Ct. No. BC550533)

APPEAL from a judgment of the Superior Court of Los Angeles County. William F. Fahey, Judge. Affirmed.

Rodriguez Law Group, Patricia Rodriguez and George M. Hill for Plaintiffs and Appellants.

Fidelity National Law Group, and Drew Taylor for Defendants and Respondents Fidelity National Title Company and Commonwealth Land Title Company.

Severson & Werson, Jan T. Chilton and Kerry W. Franich for Defendants and Respondents Wells Fargo Bank, N.A., HSBC Bank USA, N.A. and Mortgage Electronic Registration Systems, Inc.

This appeal arises from an action by homeowner-borrowers seeking damages allegedly resulting from a *pending* nonjudicial foreclosure sale initiated pursuant to a deed of trust securing a defaulted promissory note. Plaintiffs' fundamental claim is that the beneficiary asserting rights under the deed of trust wrongly initiated the nonjudicial foreclosure because it is not the "true" beneficiary under the deed of trust. In language we borrow from another case, plaintiffs allege that the beneficiary seeking to foreclose is a "nonholder of the deed of trust" or not in "the chain of ownership" of the deed of trust. (See *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079, 1088, 1093-1094 (*Glaski*).) The context of the case involves a home loan — a note and the security for the note, a deed of trust — that was "pooled" into a mortgage-backed "securitized investment trust."

The trial court, citing *Gomes v. Countrywide Home Loans, Inc*. (2011) 192 Cal.App.4th 1149 (*Gomes*) and *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497 (*Jenkins*), sustained without leave to amend separate demurrers by the beneficiary seeking to foreclose, and the acting trustee. The court's decision to sustain the demurrers was based predominantly on a ruling that the homeowner-borrowers lacked standing to state a cause of action alleging that a pending nonjudicial foreclosure was wrongful based on a theory that, as between different possible beneficiaries under the deed of trust, the wrong beneficiary initiated the foreclosure. The homeowner-borrowers appeal the ensuing judgment of dismissal entered on the court's ruling on the demurrers. We affirm the judgment.

FACTS

As usual in reviewing a trial court's decision to sustain a demurrer, we consider the material facts that are properly pleaded in the operative complaint to be true, but not contentions, deductions or conclusions of fact or law. We may also consider matters that are subject to judicial notice, such as the existence of recorded documents, but not any disputed or disputable facts stated in those documents. (*Yvanova v. New Century Mortgage Corp*. (2016) 62 Cal.4th 919, 924 (*Yvanova*).) In reviewing whether the trial court should have granted the plaintiff leave to file an amended pleading after sustaining

a demurrer, we consider whether the pleaded and noticeable facts support a reasonable possibility that an amendment would cure the operative pleading's legal defects. (*Ibid*.)

Background

In June 2007, plaintiffs and appellants Kevin and Toni Crey (the Creys) borrowed $700,000 from defendant First Magnus Financial Corporation (First Magnus) to buy a residence on North Creek Trail in Topanga. First Magnus is not involved in the Creys' instant appeal. In exchange for the borrowed funds, the Creys signed a promissory note obligating them to pay $700,000, plus interest at a specified rate, to First Magnus in periodic payments through July 2037.[1]

The promissory note signed by the Creys is secured by a deed of trust. The deed of trust identifies First Magnus as the "'Lender'" who is owed money by the Creys pursuant to the note that they signed. Further, and as more pertinent to the instant appeal, the deed of trust identifies defendant and respondent Mortgage Electronic Registration Systems, Inc. (MERS) as "a nominee" for First Magnus, and states that MERS "*is the beneficiary* under [the deed of trust]." (Italics added.)[2] The deed of trust identifies

---

[1] We have not found a copy of the note in the record. As we understand their pleading, the Creys do not challenge their debt obligation under the promissory note that they signed, and do not dispute they owe money to someone. Although not expressly alleged, the Creys' pleadings implicitly acknowledge they have defaulted on their debt obligation under their note.

[2] MERS's role in the realm of the mortgage loan business was discussed in *Gomes, supra,* 192 Cal.App.4th 1149, 1151: "'MERS is a private corporation that administers the MERS System, a national electronic registry that tracks the transfer of ownership interests and servicing rights in mortgage loans. Through the MERS System, MERS becomes the mortgagee of record for participating members . . . [i.e., the originating lenders, while the] lenders retain the promissory notes, as well as the servicing rights to the mortgages. The lenders can then sell these interests to investors without having to record the transaction in the public record. MERS is compensated for its services through fees charged to participating MERS members.' [Citation]." (*Id*. at p. 1151.)

defendant and respondent "Commonwealth Land Title" as the trustee.[3] We will hereafter refer to the deed of trust summarized here as the Crey deed of trust.

Paragraph 22 of the Crey deed of trust — as is typical of deeds of trusts — set forth the remedies available to the "Lender," i.e., First Magnus, in the event the Creys defaulted on the payments owed to First Magnus under their note and failed to cure the default. Those remedies include: "*Lender* at its option may require immediate payment in full of all sums secured by [the Crey deed of trust] without further demand and *may invoke the power sale and any other remedies permitted by Applicable Law*. . . . [¶] If *Lender* invokes the power of sale, *Lender* shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of the *Lender*'s election to cause the Property to be sold. . . ." (Italics added.)[4]

On a date not specifically alleged in the Creys' operative pleading, a mortgage-backed securitized trust known as "The Wells Fargo Mortgage Backed Securities 2007-15 Trust, a New York Common Law Trust" was created.[5] By reading different parts of the Creys' operative pleading together, it may fairly be said that they allege, based on

---

[3] In its demurrer, the Commonwealth entity states that its correct name is Commonwealth Land Title Company.

[4] Notwithstanding the "Lender" language in the Crey deed of trust, we note that Civil Code section 2924, subdivision (a)(1), which would certainly be "Applicable Law," states that a "trustee, mortgagee, or beneficiary, or any of their authorized agents" may initiate a nonjudicial foreclosure under a deed of trust. We do not read any allegation in the Creys' operative pleading to assert a claim that MERS, as First Magnus's identified "nominee" in the Crey deed of trust, and as the named "beneficiary" under the Crey deed of trust, did not have the right to invoke the power of sale. Further, of course, First Magnus would have the right to invoke the power of sale. Neither do the Creys appear to challenge that Commonwealth Land Title could conduct a foreclosure sale as the trustee.

[5] The Creys' pleading also includes this language: "Wells Fargo Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-15." They seem to use this language interchangeably with "'The Wells Fargo Mortgage Backed Securities 2007-15 Trust." It is not clear to this court that a trust and "pass-through certificates" should be viewed as one and the same, but this question does not affect the Creys' argument on appeal nor our opinion.

information and belief, that the governing documents for The Wells Fargo Mortgage Backed Securities 2007-15 Trust, prescribed a specified "closing date" for assigning home loans to the trust.[6]

Since May 17, 2011, defendant and respondent HSBC Bank, N.A. has acted as the trustee of The Wells Fargo Mortgage Backed Securities 2007-15 Trust.

On May 18, 2011, "well after the closing date" of The Wells Fargo Mortgage Backed Securities 2007-15 Trust, the note and the Crey deed of trust that the Creys had executed in June 2007 was "attempted to be transferred" into The Wells Fargo Mortgage Backed Securities 2007-15 Trust.[7] More specifically, MERS, "as nominee for First Magnus . . . ," executed an assignment of the Crey deed of trust to defendant and respondent HSBC Bank USA, N.A. identified on the face of the assignment as "trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-15" [*sic*]. Thus, at least on the face of the recorded documents up to this point, HSBC Bank, as the trustee for some entity, became the beneficiary under the Crey deed of trust as of May 18, 2011, in place of the original beneficiary, MERS.

On May 24, 2011, defendant and respondent Fidelity National Title Company, purporting to act as the trustee under the Crey deed of trust, recorded a notice of default as to the Creys. The notice of default identified MERS, "as nominee for First Magnus . . . ," as the beneficiary under the Crey deed of trust notwithstanding the

---

[6] The Creys' operative pleading does not specifically allege the closing date of The Wells Fargo Mortgage Backed Securities 2007-15 Trust.

[7] The Creys' operative pleading includes an extensive explanatory section entitled "Securitization" which sets forth their understanding of the financial industry practice of "pooling" or "bundling" mortgage loans, i.e., notes, into mortgage-backed securitized investment trusts. As explained by the Creys: Over a period of several years, originators of residential mortgages (i.e., lenders who loaned funds and received notes and deed of trust in exchange) sold their mortgages to "sponsors" who then pooled or "bundled" the mortgages together and sold the collectively bundled mortgages to "depositors" who placed the bundled mortgagees into trusts, following which shares in the trusts were offered to investors. A Pooling and Servicing Agreement (PSA) created each mortgage backed securitized trust. Each PSA-created trust had a closing date, which is the date before which the individual mortgages had to be transferred into the trust.

assignment of the Crey deed of trust from MERS to HSBC Bank dated May 18, 2011 noted in the previous paragraph.

On June 3, 2011, defendant and respondent Wells Fargo Bank, N.A., "as servicing agent for HSBC Bank USA, National Association, as trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-15" [*sic*], executed a "Substitution of Trustee" to substitute Fidelity National Title as trustee under the Crey deed of Trust in place of Commonwealth Land Title.

On June 9, 2011, Wells Fargo Bank recorded the May 18, 2011 assignment of the Crey deed of trust from MERS to HSBC Bank.

On August 25, 2011, Fidelity National Title recorded the substitution of trustee by which it had been substituted as trustee under the Crey deed of trust.

On August 25, 2011, Fidelity National Title recorded a notice of trustee's sale. This notice of trustee's sale stated that the sale was being conducted pursuant to the Crey deed of trust "in favor of [MERS], as nominee for First Magnus . . . ." Again we note that the recorded documents on their face show that MERS assigned the Crey deed of trust to HSBC Bank on May 18, 2011.

On September 13, 2012, Fidelity National Title+ recorded another notice of trustee's sale. This notice of trustee's sale, too, stated that the sale was being conducted pursuant to the Crey deed of trust "in favor of [MERS], as nominee for First Magnus . . . ."

On March 7, 2013, Fidelity National recorded yet another notice of trustee's sale. This notice of trustee's sale, too, stated that the sale was being conducted pursuant to the Crey deed of trust "in favor of [MERS], as nominee for First Magnus . . . ."

The Litigation

In July 2014, the Creys filed a complaint against First Magnus, MERS, Wells Fargo Bank, HSBC Bank, Commonwealth Land Title, and Fidelity National Title. In November 2014, the Creys filed their operative first amended complaint (FAC) alleging seven causes of action, listed respectively: declaratory relief; wrongful

foreclosure; violation of Civil Code section 2924, subdivision (a)(6);[8] violation of section 2934, subdivision (a); slander of title; breach of the covenant of good faith and fair dealing; and quiet title. The Creys named all of the "defendants" in all of their causes of action, and the text of each cause of action did not differentiate between the separate acts of the "defendants."

The overriding claim in the Creys' FAC is that the nonjudicial foreclosure proceedings pursuant to the Crey deed of trust were initiated by a party asserting to be the beneficiary under the Crey deed of trust who may not actually be the lawful beneficiary entitled to do so. The Creys allege that the attempted assignment of their home loan, i.e., the note and the security for the note, the Crey deed of trust, to The Wells Fargo Mortgage Backed Securities 2007-15 Trust was "void" because the trust's closing date passed before the date of the attempted transfer. Because the attempted transfer was void, it follows that HSBC Bank, as trustee of The Wells Fargo Mortgage Backed Securities 2007-15 Trust, never had lawful authority to initiate a nonjudicial foreclosure. Further, any attempts by HSBC Bank, as trustee of The Wells Fargo Mortgage Backed Securities 2007-15 Trust, to substitute a new trustee were ineffective for the same reason. Meaning, Fidelity National Title should not have been acting as the trustee for the nonjudicial foreclosure.

Further, the Creys allege that, "even if the [note and Crey] deed of trust had been transferred into [The Wells Fargo Mortgage Backed Securities 2007-15 Trust] by the closing date, the transaction is still void as the note [and Crey deed of trust] would not have been transferred according to the requirements of the PSA [governing The Wells Fargo Mortgage Backed Securities 2007-15 Trust], since the PSA requires a complete and unbroken chain of transfers and assignments to and from each intervening party."

The Creys' FAC prays for the following relief: compensatory damages according to proof, consequential damages according to proof, special damages according to proof, punitive damages, statutory damages as applicable, prejudgment interest according to the

[8] All further undesignated section references are to the Civil Code unless otherwise stated.

law, costs and reasonable attorney fees, and such other relief as the court may deem just and proper.

In December 2014, Fidelity National Title and Commonwealth Land Title (collectively the Trustees) filed a demurrer to the Creys' FAC. The Trustee's demurrer argued that the Creys' FAC was uncertain as to the Trustees in that it failed to allege facts showing they improperly executed their duties as trustees. Further, the Trustees argued that there was no basis for the Creys' cause of action for breach of the covenant of fair dealing as to the Trustees because they were not parties to any contract with the Creys. Finally, that the Trustees were privileged to act under section 47, subdivision (b) and had immunity from liability under section 2924 because the Creys had not alleges facts showing that the Trustees lacked reasonable grounds for believing that the Creys had defaulted on their note.

Also in December 2014, Wells Fargo Bank, HSBC Bank, and MERS filed a joint separate demurrer to the Creys' FAC. The demurrer by the bank-related defendants argued, among several grounds, that the Creys lacked standing to bring their action under *Gomes, supra*, 192 Cal.App.4th 1149 and *Jenkins, supra*, 216 Cal.App.4th 497.

On March 26, 2015, the parties argued the merits of the two demurrers to the trial court, and the court took the matter under submission. Later, the court issued a minute order sustaining both demurrers without leave to amend. The court's order cited *Gomes, supra*, 192 Cal.App.4th 1149 and *Jenkins, supra*, 216 Cal.App.4th 497.

On June 1, 2015, the trial court entered a judgment of dismissal in favor of the Trustees, and in favor of Commonwealth Land Title, Fidelity National Title, Wells Fargo Bank, HSBC Bank, and MERS based on its rulings on the demurrers.

The Creys timely appealed.

DISCUSSION

I. Judicial Notice

The Creys contend the trial court "improperly accepted the truth, validity and/or legal effect" of a series of recorded documents, for example, the Crey deed of trust, and the notices of trustee's sale prepared by Fidelity National Title, in ruling on the separate

demurrers filed by the "defendants." The documents were submitted to the trial court by HSBC Bank, Wells Fargo Bank and MERS in a request for judicial notice in support of their jointly filed demurrer. We find no error justifying reversal of the judgment.

First, the Creys forfeited their claim of error involving judicial notice because, as the trial court expressly noted in its ruling on the demurrers, they "did not object to the Request for Judicial Notice." (*Shuster v. BAC Home Loans Servicing, LP* (2012) 211 Cal.App.4th 505, 512, fn. 4 [failure to object to a request for judicial notice in the trial court forfeits the objection on appeal].)

Apart from this, the record does not support the Creys' assertion on appeal that the trial court "accepted the validity" of the recorded documents in sustaining the two demurrers that are on review on the Creys' instant appeal. Rather, the record shows at most that the court noticed the fact that the documents were recorded. For this reason, the Creys' argument that they suffered prejudice from some form of ambiguously asserted judicial misuse of the recorded documents fails to convince us to reverse.

Further, the Creys do not explain how any asserted wrongful acceptance of the validity of the recorded documents affected the trial court's stated reasons for sustaining the demurrers, or, more importantly, how the trial court's judicial notice ruling affects our de novo review of the Creys' FAC and the demurrers on appeal. (See, e.g., *Grinzi v. San Diego Hospital Corp*. (2004) 120 Cal.App.4th 72, 78 ["we review the complaint de novo to determine whether it contains sufficient facts to state a cause of action"].) It appears the existence and or recording of the assignment documents submitted in the request for judicial notice are not a true concern for the Creys because they attached a majority of the same documents as exhibits to their FAC. The assignment documents themselves are an integral element of the Creys' action in that they claim the assignments were unauthorized. To this end, the Creys' FAC explicitly alleged that the assignment documents were recorded. The Creys simply have not satisfactorily explained to us that any prejudicial error occurred in granting the request for judicial notice.

Finally, granting the request for judicial notice was proper because the recording of the documents was a fact not subject to reasonable dispute. (Evid. Code, § 452, subds. (c) & (h).)

II. The Second Cause of Action for Wrongful Foreclosure

The Creys contend the trial court erred in sustaining the demurrers as to their second cause of action seeking damages for wrongful foreclosure in light of *Glaski, supra,* 218 Cal.App.4th 1079. We disagree.

Glaski

In *Glaski*, a homeowner-borrower filed an action for wrongful foreclosure, and other related torts, *after* a foreclosure sale. Among other elements of his pleading, the homeowner-borrower alleged claims challenging "the chain of ownership" of his note and the security for the note, a deed of trust, "by contending that defendants were not the lenders or beneficiaries under his deed of trust and, therefore, did have the authority to foreclose." (*Glaski, supra,* 218 Cal.App.4th at p. 1088.) As in the Creys' instant case, *Glaski* also arose in the context of allegations that a home loan had been transferred into a mortgage-backed securitized trust after the closing date of the trust. (*Id*. at p. 1095.)

In the procedural context of a demurrer, the trial court in *Glaski* sustained a demurrer, without leave to amend, ruling that *Gomes, supra,* 192 Cal.App.4th 1149 "holds that there is no legal basis to challenge the authority of the trustee, mortgagee, beneficiary, or any other their authorized agents to initiate the foreclosure process . . . ." (*Id*. at p. 1089.) In short, the trial court in *Glaski* rejected the "chain of ownership" theory alleged in the homeowner-borrower's complaint.

The Court of Appeal reversed, approving in principle the theory of liability that a foreclosure may be found wrongful where it was initiated by a "nonholder of the deed of trust," and that a homeowner-borrower has standing to assert a claim for wrongful foreclosure based on the theory that a purported assignment of a deed of trust was ineffective because it was "void." In reaching these conclusions, the Court of Appeal recognized that a so-called outsider to a purported assignment of a deed of trust, i.e., a homeowner-borrower, would not have standing to assert a claim for wrongful foreclosure

based on a theory that an assignment of a deed of trust was merely "voidable," as that would be an issue only between the two parties to the assignment. This said, the Court of Appeal ruled that an outsider homeowner-borrower, has standing to assert a claim for wrongful foreclosure based on a theory that an attempted transfer of a deed of trust was "void," in which case no rights would have passed by the attempted assignment, and the purported assignee of the deed of trust would not have acquired any rights under the deed of trust. Specifically, there would be no right to foreclose. (*Glaski, supra,* 218 Cal.App.4th at pp. 1092-1097.)

In the end, the *Glaski* court concluded: "Glaski's factual allegations regarding post closing date attempts to transfer his deed of trust into the WaMu Securitized Trust are sufficient to state a basis for concluding the attempted transfers were void. As a result, Glaski has a stated cognizable claim for wrongful foreclosure under the theory that the entity invoking the power of sale (i.e., Bank of America in its capacity as trustee for the WaMu Securitized Trust) was not the holder of the Glaski deed of trust." (*Glaski, supra,* 218 Cal.App.4th at p. 1097, fn. omitted.) In coming to this conclusion, Glaski aligned itself with cases in accord with *Wells Fargo Bank, N.A. v. Erobobo* (N.Y.Sup.Ct. 2013) 39 Misc.3d 1220(A). (*Glaski, supra,* at p. 1097.)

Analysis

The Creys' arguments based on *Glaski* fail to persuade us that we should reverse the trial court's decision to sustain the two demurrers leveled at their FAC. Putting aside that there is an issue concerning the timing of the Creys' claims that they seem to fail to appreciate, namely, that their wrongful foreclosure claim is alleged in the context of a pending, rather than a completed, foreclosure sale (see *Gomes, supra,* 192 Cal.App.4th 1149 and *Jenkins, supra*, 216 Cal.App.4th 497), we disagree with the Creys that they have alleged sufficient facts to show a "void" assignment of the Crey deed of trust which would support a cause of action under *Glaski*. Here, we find *Saterbak v. JPMorgan*

Chase Bank, N.A. (2016) 245 Cal.App.4th 808 (*Saterbak*) to offer better reasoning than that offered in *Glaski*.[9] As explained in *Saterbak*:

"[The Supreme Court's recent decision in] *Yvanova* recognizes borrower standing only where the defect in the assignment [of a deed of trust] renders the assignment *void,* rather than *voidable*. (*Yvanova, supra,* 62 Cal.4th at pp. 942-943.) . . . *Yvanova* expressly offers no opinion as to whether, under New York law, an untimely assignment to a securitized trust made after the trust's closing date is void or merely voidable. (*Id*. at pp. 940-941.) We conclude such an assignment is merely voidable. (See *Rajamin v. Deutsche Bank National Trust Co*. (2d. Cir. 2014) 757 F.3d 79, 88-89 (*Rajamin*) ['the weight of New York authority is contrary to plaintiffs' contention that any failure to comply with the terms of the PSAs rendered defendants' acquisition of plaintiffs' loans and mortgages void as a matter of trust law'; 'an unauthorized act by the trustee is not void but merely voidable by the beneficiary'].) Consequently, Saterbak lacks standing to challenge alleged defects in the MERS assignment of the DOT to the 2007–AR7 trust." (*Saterbak, supra,* 245 Cal.App.4th at p. 815, fn. omitted.)

"Saterbak cites [*Glaski, supra,* 218 Cal.App.4th 1079], but the New York case upon which *Glaski* relied has been overturned. (*Wells Fargo Bank, N.A. v. Erobobo* (N.Y.App.Div. 2015) 127 A.D.3d 1176, 1178, 9 N.Y.S.3d 312; see *Rajamin, supra,* 757 F.3d at p. 90 [rejecting *Glaski*'s interpretation of New York law].) We decline to follow *Glaski* and conclude the alleged defects here merely render the assignment voidable." (*Saterbak, supra,* 245 Cal.App.4th at p. 815, fn. 5.)

Our own reading of *Yvanova, supra,* does not compel us to reach a different result. *Yvanova* involved a homeowner-borrower's attempt to state a cause of action for wrongful foreclosure that was filed *after* a foreclosure sale. In the context of a demurrer, the Supreme Court addressed his issue: "'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

---

9 A petition for review is pending in *Saterbak* (S234109.)

assignment void?'" (*Yvanova, supra*, 62 Cal.4th at p. 926.) On this issue, the court unanimously ruled: "[B]ecause in a nonjudicial foreclosure only the original beneficiary of a deed of trust or its assignee or agent may direct the trustee to sell the property, an allegation that the assignment was void, and not merely voidable at the behest of the parties to the assignment, will support an action for wrongful foreclosure." (*Id*. at p. 923.) However, in establishing this rule, the Supreme Court stressed that its ruling was "a narrow one," explaining: "We hold only that a borrower who has suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment merely because he or she was in default on the loan and was not a party to the challenged assignment. *We do not hold or suggest that* . . . plaintiff in this case has alleged facts showing the assignment is void . . . ." (*Id*. at p. 924, italics added.) As the Supreme Court summarized: "We conclude 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.)

Because the Supreme Court expressly declined to decide whether the borrower in *Yvanova* had sufficiently alleged a void, rather than voidable, transfer of a deed of trust, and because we agree with *Saterbak*'s conclusion that a transfer of a deed of trust to a securitized trust after its closing date is only a voidable transfer, we find the demurrers to the Creys' cause of action for wrongful foreclosure were correctly sustained.

III. Third Cause of Action for Violation of Section 2924, Subdivision (a)(6)

The Creys contend the trial court erred in sustaining the demurrers as to their third cause of action for violation of section 2924, subdivision (a)(6). We disagree.

Section 2924, subdivision, (a)(6) provides:

> "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. No agent of the holder of the beneficial interest under the mortgage or deed of trust, original trustee or substituted trustee under the deed of trust may record a notice of default or otherwise commence the foreclosure process except when acting within the scope of authority designated by the holder of the beneficial interest."

The Creys' third cause of action seeks money damages for alleged violations of section 2924, subdivision (a)(6) by the "defendants." The theory underpinning the Creys' third cause of action is the same as for their cause of action for wrongful foreclosure, namely, the so-called "chain of ownership" theory. In other words, that the foreclosure was initiated by a party who did not have the authority to foreclose.

The Creys' arguments on appeal that they stated a cause of action for violation of section 2924(a)(6), subdivision are insufficient to demonstrate that the trial court incorrectly sustained the demurrers by Commonwealth Land Title and Fidelity National Title on the one hand, and by MERS, Wells Fargo Bank, and HSBC Bank on another hand. The arguments do little more than quote the language of section 2924, subdivision (a)(6), and offers no legal authority for their proposition that a homeowner-borrower has private right of action for damages under the section.

IV. Leave to Amend

The Creys contend the trial court abused its discretion in denying them the right to further amend. We disagree.

The Creys have failed to satisfy their burden of showing how they would amend their FAC to avoid *Gomes*, *supra*, and *Jenkins*, *supra*, and *Saterbak*, *supra*. Instead, the Creys argue on appeal that they should have been given leave to amend to "clarify their arguments." The Creys need to proffer alleged facts not previously alleged, not clarification of their arguments. The Creys simply have failed to show grounds for reversing the trial court's decision to deny leave to amend.

V. Remaining Causes of Action

The Creys' opening brief on appeal offers no arguments challenging the correctness of the trial court's judgment of dismissal based on their fourth cause of action for violation of section 2934, subdivision (a), their fifth cause of action for slander of title, their sixth cause of action for breach of the covenant of good faith and fair dealing, or their seventh cause of action for quiet title. Accordingly, we find the presumptively correct judgment must be affirmed as to those causes of action.

DISPOSITION

The judgment of dismissal is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.