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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SATISH SHETTY, Plaintiff and Appellant, v. THE BANK OF NEW YORK MELLON et al., Defendants and Respondents.	2d Civil No. B279511 (Super. Ct. No. 56-2016-00478531-CU-OR-VTA) (Ventura County)

Appellant Satish Shetty acquired a home from a homeowners' association that foreclosed on an assessment lien for unpaid dues. At the time Shetty acquired the property, a bank was foreclosing on it pursuant to a purchase money first trust deed. Shetty did not tender the debt secured by the senior encumbrance. Respondent Bank of New York Mellon (Bank) was the successful credit bidder at auction. Shetty's junior interest in the property was eliminated.

Shetty sued Bank and the foreclosure trustee, claiming that they wrongfully clouded his title to the property. The second

iteration of the pleading added Bank's attorneys as defendants. The trial court struck Shetty's claim against the attorneys as a Strategic Lawsuit Against Public Participation (SLAPP), and sustained demurrers to the pleading without leave to amend.

Shetty challenges the right of Bank's attorneys to represent their client; however, we conclude that the attorneys' activity in court proceedings comes within the anti-SLAPP law. (Code Civ. Proc., § 425.16.) We also conclude that Shetty lacks standing to contest Bank's right to foreclose. The record supports dismissal of Shetty's lawsuit. We affirm.

FACTS AND PROCEDURAL HISTORY

Shetty claims ownership of property on Ilex Drive in Newbury Park (the Property). The Property formerly belonged to Mr. and Mrs. Thorpe, who purchased it with a $460,000 loan from Countrywide Home Loans, secured by a first deed of trust (DOT) recorded in 2007.[1] The beneficiary of the DOT is Mortgage Registration Systems, Inc. (MERS). In July 2011, MERS recorded an assignment transferring its interest in the DOT to Bank.

The Property is governed by the Shadow Run Homeowners Association (HOA). When the Thorpes failed to pay dues, HOA recorded a lien against the Property in August 2011. The lien was foreclosed in February 2013; a trustee's deed on sale shows that HOA paid $4,788 for the Property at auction. In October 2013, HOA sold its interest in the Property to Tatonka Acquisitions, Inc. In turn, Tatonka transferred its interest to Shetty by a grant deed recorded in February 2016.

Apart from failing to pay their HOA dues, the Thorpes defaulted on their loan payments. In October 2011, a Notice of

[1] The Thorpes are not parties to this lawsuit.

Default and Election to Sell (NOD) was recorded, advising the Thorpes that the Property was in foreclosure and directing them to pay their debt to Bank. The first NOD was rescinded. A second NOD was recorded in September 2015, showing a delinquency of $192,041 and directing payoff questions to Bank's loan servicer.

The foreclosure trustee, respondent Seaside Trustee Inc. (Seaside), recorded a notice of trustee's sale on February 2, 2016. Two weeks later, Shetty recorded a request to receive notices of default or sale under the DOT. A trustee's deed upon sale was recorded on March 1, 2016, conveying the Property to Bank as the successful credit bidder at auction.

Shetty filed this lawsuit on February 22, 2016. Bank removed the case to federal court on April 7, 2016, asserting diversity jurisdiction. Respondent law firm McGlinchey Stafford (Law Firm) was Bank's legal counsel. After the case was removed, Shetty requested and received entry of default against respondents in superior court. The trial court set aside the defaults in June 2016, at respondents' request, when the case returned to state court.

Bank and Seaside moved for judgment on the pleadings; the trial court granted the motion, with leave to amend. Shetty filed a first amended complaint (FAC), adding Law Firm as a defendant. He asserts various statutory violations, wrongful foreclosure and seeks to quiet title and cancel instruments.[2] He also claims that Law Firm violated the Business and Professions Code. The trial court granted Law Firm's motion to strike under the anti-SLAPP law and sustained demurrers to the FAC without

[2] Shetty has abandoned virtually all of these claims by failing to address them on appeal.

leave to amend because "further leave would only encourage creative writing."

DISCUSSION

1. Ruling on the Anti-SLAPP Motion

The anti-SLAPP law "provides a procedure for weeding out, at an early stage, *meritless* claims" that chill a defendant's exercise of First Amendment rights. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.) The trial court's ruling on a motion to strike under the anti-SLAPP law is reviewed de novo. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.)

Shetty alleges that Law Firm wrongfully purported to represent Bank in this lawsuit. The FAC states that Law Firm's "conduct . . . in misrepresenting [its] authority to represent the defendants corrupted the proceeding in Superior Court," relying on a statute that prohibits counsel from appearing for a party in an action without authorization.[3] Shetty claims harm because he would have prevailed had Law Firm not asked the trial court to vacate the defaults he took while this case was removed to federal court.

The courts must strike causes of action "arising from" the defendant's exercise of First Amendment rights to petition or to free speech. (Code Civ. Proc., § 425.16, subd. (b)(1); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) This requires a two-step analysis.

First, the defendant has the burden of showing that the pleading is based on protected activity. Once this showing is made, the second step shifts the burden to the plaintiff to demonstrate a probability of prevailing. The court determines

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[3] "Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension." (Bus. & Prof. Code, § 6104.)

whether the plaintiff's showing, if accepted by a trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. (*Baral v. Schnitt*, *supra*, 1 Cal.5th at p. 396.)

a. Law Firm Has Shown that Shetty's Claims Arise From Protected Petitioning Activity

Law Firm argues that the claims against it arise from its filing court documents in this lawsuit. A statement or writing made in a judicial proceeding is protected activity. (Code Civ. Proc., §425.16, subd. (e)(1)-(2).) The focus "is not on the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92.)

The activity underlying Shetty's claim—Law Firm's representation of Bank in the trial court—is constitutionally protected. "[A]ll communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute." (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 479-480; *Contreras v. Dowling* (2016) 5 Cal.App.5th 394, 408-409.) Law Firm has established the first prong of the SLAPP analysis.

b. Shetty Did Not Show A Probability of Prevailing on the Merits

Shetty must demonstrate a probability of prevailing on his claim to defeat the motion to strike. (*Equilon Enterprises v. Consumer Cause, Inc.*, *supra*, 29 Cal.4th at p. 67.) Though "minimal merit" is required to survive an anti-SLAPP motion (*Navellier v. Sletten*, *supra*, 29 Cal.4th at p. 89), Shetty cannot show minimal merit here for two reasons:

First, Shetty's claims about Law Firm's conduct are barred by the litigation privilege. Publications in judicial proceedings are absolutely privileged. (Civ. Code, § 47, subd. (b); *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241.) The privilege immunizes litigants from liability for acts arising from communications made "to achieve the objects of the litigation" that have "some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) Litigants are afforded "the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions." (*Id.* at p. 213.) We conclude that Law Firm's representation of Bank in court and its motion to vacate default are privileged communications that achieve the ends of litigation.

Second, alleged violations of Business and Professions Code section 6104 do not authorize Shetty to sue Law Firm. Violation of a disciplinary rule allows the Supreme Court to suspend or disbar an attorney. (Bus. & Prof. Code, § 6100.) It does not give "an antagonist in a collateral proceeding or transaction . . . standing to seek enforcement of the rule." (*Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 303.)

We conclude that Shetty cannot prevail against Law Firm. Accordingly, his claims against Law Firm must be stricken.

2. Ruling on Demurrer

Shetty discusses the trial court's ruling on respondents' demurrer in four pages near the end of his brief. He does not address most causes of action in the FAC, focusing only on his complaints about the assignment of the DOT from MERS to Bank. Shetty has abandoned claims not addressed in his opening brief, and we do not discuss them in this opinion. (*Villari v. Mozilo* (2012) 208 Cal.App.4th 1470, 1479.)

Shetty challenges the description of Bank in the DOT. MERS assigned the DOT to "The Bank of New York Mellon fka The Bank of New York, as trustee for the certificateholders of the CWMBS Inc., CHL Mortgage Pass-Through Trust 2007-HYB1, Mortgage Pass Through Certificates, Series 2007-HYB1."

Shetty agrees that Bank "is a trustee of CHL Mortgage Pass-Through Trust 2007-HYB1." Nonetheless, he disputes that Bank is trustee "'for the certificateholders'" of the pass-through trust. He argues that the description of Bank as trustee for the certificate holders makes the DOT assignment void and barred Bank from foreclosing on the Property.

Only *borrowers* have standing to challenge an assignment of their loan. (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 924.) Shetty is not the borrower. Instead, he merely acquired the interest of a junior lienholder. "California law does not give a party personal standing to assert rights or interests belonging solely to others." (*Id.*, at p. 936.) Shetty has no standing to assert rights that belonged to the Thorpes, as the borrowers, regarding transfers of the DOT.

The Thorpes' purchase money DOT had priority over HOA's junior lien. (Civ. Code, § 2898, subd. (a).) Shetty acquired HOA's interest in 2016, *five years after* (1) MERS recorded an assignment of the DOT to Bank and (2) a NOD was recorded because the loan secured by the DOT was in default. Given his constructive notice of recorded documents, Shetty cannot claim ignorance of the identity of the DOT assignee or the NOD.

Ultimately, Shetty's interest was eliminated when Bank foreclosed on the DOT because he failed to pay off the senior encumbrance. (*Thaler v. Household Finance Corp.* (2000) 80 Cal.App.4th 1093, 1101 [purchaser of an assessment lien takes the property subject to an existing deed of trust, as a matter of

law].) Had Shetty tendered the debt, the DOT would have been extinguished and foreclosure averted. (*Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 438-441.)

Shetty's arguments regarding the purported non-existence of a creditor do not withstand scrutiny. The Bank exists. Shetty admits that the Bank is trustee of the pass-through trust that holds the DOT. Shetty's obligation to pay the debt secured by the DOT did not evaporate merely because the assignment from MERS includes language referring to "certificateholders."

As the purchaser of a subordinate interest, Shetty had to tender the debt secured by the DOT in order to preserve his interest in the Property and become a bona fide purchaser for value. (*Nguyen v. Calhoun*, *supra*, 105 Cal.App.4th at pp. 439-446.) He did not do so, and his junior interest was extinguished.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Henry J. Walsh, Judge

Superior Court County of Ventura

Satish Shetty, in pro. per.; and Paul M. Hittelman for Plaintiff and Appellant. [*Retained*.]

McGlinchey Stafford, Sanford Shatz and Hassan Elrakabawy for Defendants and Respondents.