Filed 8/15/17 Rouzan v. Mortgage Electronic Registration Systems CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

RODNEY ROUZAN, Plaintiff and Appellant, v. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., et al., Defendants and Respondents.	B270144 (Los Angeles County Super. Ct. No. MC024393)

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

Rodney Rouzan, in pro. per., for Plaintiff and Appellant.

Severson & Werson, Jan T. Chilton, Jonah S. Van Zandt and Kerry W. Franich for Defendants and Respondents.

INTRODUCTION

In this wrongful foreclosure action, Rodney Rouzan appeals from the judgment entered after the trial court granted a motion for judgment on the pleadings filed by Mortgage Electronic Registration Systems (MERS), Recon Trust Company, N.A. (Recon Trust), Bank of New York Mellon (BNY Mellon),[1] and Bank of America Home Loans (Bank of America). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND[2]

A. *The Loan and Foreclosure*

In 2005 Rouzan borrowed $280,856 from KB Home Mortgage Company to buy a house in Lancaster, California. To secure the loan, Rouzan executed a deed of trust identifying him as the borrower, KB Home Mortgage as the lender, First American Title Insurance Company (First American) as trustee, and MERS as the beneficiary and a nominee of the lender and its successors and assigns.

In October 2010 MERS recorded a substitution of trustee and assignment of deed of trust naming Recon Trust as the new

---

[1] Rouzan sued BNY Mellon as "the Bank of New York Mellon fka the Bank of New York as trustee for the Certificate Holders CWALT, Inc. Alternative Loan Trust 2005-47CB."

[2] When reviewing a trial court's order granting a defendant's motion for judgment on the pleadings, "'[w]e treat the properly pleaded allegations of [the] complaint as true, and also consider those matters subject to judicial notice.'" (*International Assn. of Firefighters Local Union 230 v. City of San Jose* (2011) 195 Cal.App.4th 1179, 1196.)

trustee and assigning all beneficial interest under the deed of trust to "the Bank of New York Mellon fka the Bank of New York as Trustee for the Certificate holders CWALT, Inc. Alternative Loan Trust 2005-47CB Mortgage Pass-through Certificates, Series 2005-47CB." In October 2011 Recon Trust recorded a notice of default and election to sell under deed of trust, which stated Rouzan was in default on his loan. In January 2014 Recon Trust recorded a notice of trustee's sale, and on February 13, 2014 it sold the Lancaster property at a foreclosure sale.

B. *The Federal Action*

In April 2012, after Recon Trust had recorded the notice of default and before the trustee's sale, Rouzan filed suit in federal court against Recon Trust, Bank of America, N.A., and others, asserting a claim for "mortgage fraud." In essence, Rouzan alleged Recon Trust improperly initiated foreclosure proceedings against him because it did not have "proof of authority to act as shown by an original, unaltered promissory note" and "business records sufficient to verify that there [was] a deficiency" in payment.

Recon Trust and the other defendants filed a motion to dismiss Rouzan's complaint pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure, and in August 2012 the district court granted the motion. In its ruling the court rejected Rouzan's contention that the defendants' alleged failure to produce an "original, unaltered promissory note" deprived them of authority to foreclose.

C. *This Action*

On February 21, 2014 Rouzan filed this action against KB Home Mortgage, MERS, Recon Trust, and others, asserting, among other causes of action, "wrongful exercise of power of sale." After the court sustained a demurrer (filed by MERS and other defendants) with leave to amend, Rouzan filed the operative verified first amended complaint, which named as defendants KB Home Mortgage, MERS, Recon Trust, BNY Mellon, First American, and Bank of America.[3]

The first amended complaint asserted causes of action for violation of the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.) (FDCPA) against Recon Trust and Bank of America; trespass against Recon Trust, Bank of America, and BNY Mellon; cancellation of written instruments against all defendants; and quiet title against all defendants. Rouzan alleged Recon Trust did not respond in the manner required by the FDCPA when he contacted Recon Trust in February 2014 to dispute the debt underlying the foreclosure Recon Trust had initiated. He also alleged the substitution of trustee and assignment of deed of trust that MERS recorded was "void and without effect" because MERS did not execute it, MERS never took possession of the promissory note, MERS was not entitled to receive payments under the note, and a letter he received from Bank of America in February 2014 contained the wrong loan number. Among other relief, Rouzan requested cancellation of the substitution of trustee and assignment of deed of trust, cancellation of the foreclosure-related documents recorded by

---

[3] It appears from exhibits attached to the first amended complaint that Bank of America serviced Rouzan's loan.

Recon Trust, and a declaration that the foreclosure sale was "null and void."

MERS, Recon Trust, BNY Mellon, and Bank of America (the MERS defendants) filed a demurrer to the first amended complaint. The trial court sustained the demurrer to the causes of action for violation of the FDCPA and trespass without leave to amend and overruled the demurrer to the causes of action for cancellation and quiet title.[4] The MERS defendants then answered.

Rouzan demurred to and moved to strike the MERS defendants' answer, arguing, among other things, it was deficient because it was a general denial and unverified. Before the hearing on Rouzan's demurrer and motion to strike, however, the MERS defendants filed a verified amended answer specifically denying Rouzan's allegations. The trial court then sustained Rouzan's demurrer to some of the MERS defendants' affirmative defenses, otherwise overruled the demurrer, and denied Rouzan's motion to strike.

The MERS defendants subsequently moved for judgment on the pleadings, contending the judgment in Rouzan's federal action barred this action under the doctrine of res judicata and, in any event, Rouzan had not alleged facts sufficient to state a cause of action for cancellation of written instruments or quiet title. The trial court granted the motion on both grounds without

---

[4] First American demurred separately, and the court sustained that demurrer without leave to amend. Rouzan asserts default was entered against KB Home Mortgage in October 2014, but he does not cite (and we do not find) anything in the record to support that assertion.

leave to amend. The court entered judgment in favor of the MERS defendants, and Rouzan timely appealed.

DISCUSSION

Rouzan argues the trial court erred in granting the MERS defendants' motion for judgment on the pleadings on the ground of res judicata, overruling his demurrer to the MERS defendants' answer, and denying his motion to strike. Rouzan also contends the trial court, throughout the litigation, was biased and treated him unfairly.

A. *By Failing To Address the Trial Court's Alternative Ground for Granting the Motion for Judgment on the Pleadings, Rouzan Has Failed To Demonstrate Error*

"'A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review.'" (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777; see *Marzec v. Public Employees' Retirement System* (2015) 236 Cal.App.4th 889, 900 ["'[b]ecause a motion for judgment on the pleadings is the functional equivalent of a general demurrer, the same rules apply'"].) Although our review is de novo, "'it is appellant's burden to affirmatively show error. [Citation.] To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error.'" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457 (*Multani*); see *Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1490 ["'plaintiff has the burden of showing that the facts pleaded are sufficient to establish every element of

the cause of action and overcoming all of the legal grounds on which the trial court sustained the demurrer'"].)

We review a trial court's order denying leave to amend after granting a motion for judgment on the pleadings for abuse of discretion. (*Disney v. City of Concord* (2011) 194 Cal.App.4th 1410, 1415.) "To show an abuse of discretion, the plaintiff has the burden of demonstrating that 'there is a reasonable possibility the plaintiff could cure the defect with an amendment.'" (*Foundation For Taxpayer And Consumer Rights v. Nextel Communications, Inc.* (2006) 143 Cal.App.4th 131, 135.)

Rouzan contends the trial court erred in granting the MERS defendants' motion for judgment on the pleadings on the ground of res judicata. But as the MERS defendants point out, Rouzan ignores the other, independent ground on which the trial court granted the MERS defendants' motion: Rouzan failed to allege facts sufficient to state a cause of action for cancellation of instruments or quiet title. By failing to address that basis for the trial court's ruling, Rouzan has forfeited any argument that the court's alternative ground was erroneous. "'Although our review . . . is de novo, it is limited to issues which have been adequately raised and supported in plaintiff['s] brief. [Citations.] Issues not raised in an appellant's brief are deemed waived or abandoned.'" (*Davies v. Sallie Mae, Inc.* (2008) 168 Cal.App.4th 1086, 1096; accord, *WA Southwest 2, LLC v. First American Title Ins. Co.* (2015) 240 Cal.App.4th 148, 155; see *Multani*, *supra*, 215 Cal.App.4th at pp. 1457-1458 [affirming dismissal pursuant to an order granting a motion for judgment on the pleadings because, by failing to provide proper legal analysis, the appellant forfeited any argument the trial court erred].) Because we affirm the trial court's ruling on the ground Rouzan failed to allege facts

sufficient to state a cause of action, we do not reach the question whether res judicata also barred the action. (See *Rossberg*, *supra*, 219 Cal.App.4th at p. 1490 [on appeal the "'plaintiff has the burden of . . . overcoming all of the legal grounds on which the trial court sustained the demurrer'"]; *Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031 ["[w]e will affirm if there is any ground on which the demurrer can properly be sustained"].)

Nor does Rouzan suggest how he could amend his complaint to cure its defects. (See *Foundation For Taxpayer And Consumer Rights v. Nextel Communications, Inc.*, *supra*, 143 Cal.App.4th at p. 135.) Therefore, the trial court did not err in granting the MERS defendants' motion for judgment on the pleadings without leave to amend.

B. *The Trial Court Did Not Err in Overruling Rouzan's Demurrer to the MERS Defendants' Answer and Denying His Motion To Strike*

Rouzan contends the trial court erred in overruling his demurrer to the MERS defendants' answer and denying his motion to strike because the answer "failed," which entitled him "to judgment as a matter of law." He argues the answer to the verified first amended complaint "failed" because it was a general denial and unverified. (See Code Civ. Proc., § 431.30, subd. (d) [if the complaint is verified, "the denial of the allegations shall be made positively or according to the information and belief of the defendant," rather than by general denial]; *id.*, § 446, subd. (a) ["[w]hen the complaint is verified, the answer shall be verified"].)

After Rouzan filed his demurrer and motion to strike, however, and before the trial court heard them, the MERS defendants amended their answer, which they were entitled to do. (See former Code of Civ. Proc., § 472, as amended by Stats. 2015, ch. 418, § 3 ["[a]ny pleading may be amended once by the party of course . . . after demurrer and before the trial of the issue of law thereon"].)[5] The amended answer superseded the original and mooted Rouzan's demurrer and motion to strike. (See *JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477 [""""an amendatory pleading supersedes the original one, which ceases to perform any function as a pleading,""""" and renders moot a motion directed at the original].) Because the amended answer was a verified, specific denial of Rouzan's allegations, it did not have the defects that, according to Rouzan, required the trial court to sustain his demurrer and grant his motion to strike.

---

[5] The MERS defendants' amended answer also complied with the current version of Code of Civil Procedure section 472, which provides, in relevant part, that "[a] party may amend its pleading once without leave of court at any time . . . after a demurrer is filed but before the demurrer is heard if the amended [pleading] is filed and served no later than the date for filing an opposition to the demurrer." (Code of Civ. Proc., § 472, subd. (a).) The MERS defendants filed and served their amended answer a week before their opposition to the demurrer was due, which was August 21, 2014, nine court days before the September 4, 2014 hearing on the demurrer. (See *id.*, § 1005, subd. (b).)

As noted, rather than treat Rouzan's demurrer as moot in its entirety, the trial court considered the arguments relating to the MERS defendants' affirmative defenses and sustained the demurrer to some of those defenses. Rouzan appears to suggest the trial court erred in not sustaining the demurrer to all of the affirmative defenses, but he does not discuss any particular defense or identify any particular deficiency beyond complaining generally of a lack of "facts." Instead, Rouzan maintains "the deficiencies of the affirmative defenses of the answer are apparent." This is insufficient to demonstrate error. (See *Multani*, *supra*, 215 Cal.App.4th at pp. 1457-1458.)

In any event, because we affirm the trial court's subsequent ruling that Rouzan failed to allege facts sufficient to state a cause of action, any error in failing to sustain his demurrer to the MERS defendants' affirmative defenses was harmless. (See Code Civ. Proc, § 475; *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 198 ["[t]he burden rests with the party claiming error to demonstrate not only error but also the resulting prejudice"]; *Johnson v. Holmes Tuttle Lincoln-Mercury, Inc.* (1958) 160 Cal.App.2d 290, 300-301 [rejecting the appellant's argument that the trial court erred in overruling its demurrer because purported error "did not affect [appellant's] substantial rights in any way"].)

C. *There Is No Merit to Rouzan's Contention the Trial Court Was Unfair and Biased*

Finally, Rouzan argues that, because the trial court's conduct toward him throughout the litigation "was unfair, bias[ed], and not impartial," the case "should be reversed back to the original complaint." In support of that contention, Rouzan

offers a scattershot list of supposed legal errors and instances where the trial court purportedly failed to protect him from "harassment" by the procedural tactics of the MERS defendants and their attorneys. For example, he complains the trial court erred in "fail[ing] to exercise discretion to hear" a motion he made to strike the MERS defendants' demurrer to the initial complaint and in not sustaining his objections of "attorney misconduct" by counsel for the MERS defendants.

Rouzan's contention has no merit. To be sure, "[a] party has the right to an objective decision maker and to a decision maker who appears to be fair and impartial." (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 390; see *Brown v. American Bicycle Group, LLC* (2014) 224 Cal.App.4th 665, 673 ["'[t]he Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases'"].) But even if the rulings Rouzan cites were erroneous, nothing in the record suggests those rulings reflected bias or partiality on the part of the trial court against Rouzan. (See *Brown*, at p. 674 ["[t]he mere fact that the trial court issued rulings adverse to [the appellant] on several matters in this case, even assuming one or more of those rulings were erroneous, does not indicate an appearance of bias, much less demonstrate actual bias"]; *Wechsler*, at p. 391 ["[t]he California Supreme Court has cautioned that a party raising the issue [of bias] has a heavy burden and must '"clearly"' establish the appearance of bias"]; *Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 59-60 ["[w]hile we conclude the court erred in several respects, the leap from erroneous rulings to the appearance of bias is one we decline to make"].)

DISPOSITION

The judgment is affirmed. The MERS defendants are to recover their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.