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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SATISH SHETTY,

Plaintiff and Appellant,

v.

HSBC BANK USA, N.A. et al.,

Defendants and
Respondents.

B271183

(Los Angeles County
Super. Ct. No. LC102304)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rick S. Brown, Judge. Reversed in part, and affirmed in part.

Paul M. Hittelman; Satish Shetty, in pro. per., for Plaintiff and Appellant.

Wright, Finlay & Zak, Gwen H. Ribar and Marvin B. Adviento, for Defendants and Respondents HSBC Bank USA, National Association, etc.

Reed Smith, Kasey J. Curtis, and Elena O. Gekker, for Defendants and Respondents Bank of America, N.A., etc.

Satish Shetty, representing himself, appeals the judgment of dismissal entered after the trial court sustained without leave to amend demurrers to his first amended complaint. Shetty contends the court erred in ruling he did not have standing to bring a quiet title action regarding property he had acquired from a junior lienholder or to challenge an assignment of the first deed of trust (the senior lien) between Bank of America, N.A. and HSBC Bank USA, N.A. He also contends he was not afforded a fair or meaningful hearing. Because Shetty has adequately pleaded a quiet title action against HSBC, we reverse the judgment as to it and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Transactions Involving the Tarzana Property

In April 2007 Reuben Ben Levy borrowed \$204,000 from Countrywide Bank FSB. The loan was evidenced by a promissory note between Ben Levy and Countrywide and secured by a deed of trust on property located at 18307 Burbank Boulevard, unit 138, Tarzana, California 91356. ReconTrust Company was named as trustee, and Mortgage Electronic Registration Systems, Inc. (MERS) as beneficiary under the deed of trust as nominee for Countrywide and Countrywide's successors and assigns.

In July 2009 Villa Lorena Homeowners Association recorded a notice of delinquent assessment indicating Ben Levy was \$2,533.40 in arrears to the association. On February 4, 2011 the association recorded a notice of default and election to sell; on August 29, 2011 a notice of trustee's sale was recorded in connection with the assessment lien with a sale date of September 20, 2011; on October 5, 2011 a certificate of foreclosure was recorded confirming that the association was the successful bidder at the foreclosure sale. On January 13, 2012 a

trustee's deed upon sale was recorded, evidencing that the association had acquired title to the Tarzana property.

Tatonka Acquisitions, Inc., a corporation owned by Shetty, purchased the Tarzana property from the association on July 15, 2013. The grant deed was recorded on July 25, 2013. Tatonka did not assume any responsibility for the loan to Ben Levy, which remained secured by the deed of trust covering the Tarzana property. Tatonka transferred all of its interest in the Tarzana property to Shetty on December 11, 2014, as reflected in a grant deed recorded December 18, 2014.

In the meantime, in July 2011 MERS had assigned the deed of trust on the Tarzana Property to Bank of America's predecessor, BAC Home Loan Servicing, LP fka Countrywide Home Loans Servicing, LP. On January 27, 2012 ReconTrust recorded a notice of default and election to sell under deed of trust on behalf of Bank of America. The notice stated Ben Levy was in default on the secured promissory note in the sum of \$19,450.21. ReconTrust recorded a notice of trustee's sale under the deed of trust on April 30, 2012; the trustee's sale was scheduled for May 23, 2012. The trustee's sale did not occur.

On November 19, 2013 Bank of America assigned the deed of trust to HSBC Bank, National Association, as Trustee for the Holders of the Deutsche Alt-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2007-OA3. On April 7, 2014 HSBC substituted Quality Loan Service Corporation as trustee under the deed of trust on the Tarzana property. The substitution was recorded on September 23, 2014.¹

¹ A second substitution of Quality Loan Service as trustee was executed on September 22, 2014 and recorded on December 3, 2014.

On October 10, 2014 Quality Loan Service recorded a notice of trustee's sale based on Ben Levy's default on the note secured by the deed of trust. The sale, originally scheduled for November 4, 2014, ultimately took place on June 8, 2015. A trustee's deed upon sale from Quality Loan Service as trustee to HSBC as grantee was recorded on June 19, 2015. (HSBC was also identified as the foreclosing beneficiary in the trustee's deed upon sale.)

2. Shetty's First Amended Complaint

On October 30, 2014 Tatanka filed a complaint for wrongful foreclosure, unfair business practices, quiet title and declaratory relief against HSBC and Quality Loan Service. The complaint alleged, in part, that HSBC was not the current beneficiary of the deed of trust on the Tarzana property. On January 26, 2015, following Tatanka's transfer of its interest in the Tarzana property to Shetty, Shetty, representing himself, filed a first amended complaint asserting causes of action for slander of title, cancellation of written instruments, violation of Civil Code section 1788.1 et seq., unfair business practices, quiet title and declaratory relief.² In addition to HSBC and Quality Loan Service, the first amended complaint named as defendants Bank of America, MERS and four individuals who were involved in the preparation of the documents assigning the deed of trust from MERS ultimately to HSBC.

After describing the transactions that led to his acquisition of the Tarzana property and Ben Levy's secured loan from

² Shetty was permitted to join the lawsuit as plaintiff pursuant to stipulation. Tatanka dismissed all its causes of action and was subsequently dismissed from the action.

Countrywide, in his first amended complaint Shetty alleged, upon origination of the promissory note and deed of trust and prior to its funding, Countrywide securitized the debt instruments and sold or pledged them to DB Structured Products, Inc, which then assigned them to Mortgage IT Securities Corporation. Mortgage IT Securities thereafter merged into Deutsche Bank Securities, Inc. Shetty additionally alleged, on information and belief, that further securitization occurred and that Countrywide, DB Structured Products, Deutsche Bank Securities and related entities no longer owned any interest in Ben Levy's debt instruments as of the date of filing the first amended complaint.

According to the first amended complaint, neither Mortgage IT Securities nor Deutsche Bank Securities was a member of MERS, and MERS was not authorized to act on behalf of a nonmember. Shetty thus alleged the various assignments of the deed of trust on the Tarzana property prepared, executed or recorded by MERS, Bank of America and HSBC were made without authority and were ineffective to convey any interest in the Tarzana property to any of the named defendants.

In his first cause of action for slander of title and second cause of action for cancellation of written instruments, Shetty alleged defendants had fabricated and caused to be recorded false and forged instruments (substitution of trustee, assignment of deed of trust, notice of default, notice of trustee's sale and trustee's deed upon sale) and requested cancellation of those documents.³ Shetty's third cause of action for violating Civil

³ Shetty alleged on information and belief that the bank officials' signatures on the various assignments of the deed of

Code section 1788.1 et seq. alleged defendants had misrepresented a debt owed by Shetty and his assignors and engaged in fraudulent efforts to collect that debt. His fourth cause of action for unfair business practices in violation of Business and Professions Code section 17200 alleged defendants had executed and recorded false and misleading documents, instituted improper or premature foreclosure proceedings and demanded payment for debts that were nonexistent. His fifth cause of action to quiet title alleged he was a bona fide purchaser for value of the Tarzana property and sought a resolution of his ownership rights to the property. The sixth cause of action for declaratory relief requested a judicial determination of his rights and duties with respect to the Tarzana property and the deed of trust securing the Ben Levy promissory note.

3. The Banks' Demurrers and the Trial Court's Ruling

Bank of America, MERS and the named individuals demurred to the first amended complaint on March 2, 2015. HSBC filed a separate demurrer on March 17, 2015. The principal argument in both demurrers was that Shetty lacked standing to challenge the various assignments of the deed of trust and the foreclosure proceedings because he was not a party to the loan agreement. They also argued MERS at all times had authority to sign documents on behalf of Countrywide, the original lender, and Shetty's claims were insufficiently pleaded, belied by the public record or time-barred.

Shetty filed separate oppositions to the two demurrers in December 2015. Both the demurring parties and Shetty filed

trust on the Tarzana property had been fabricated or forged and falsely notarized under penalty of perjury.

requests for judicial notice of various documents relating to the transactions involved in the first amended complaint.

The court heard argument on January 20, 2016 and sustained the demurrers without leave to amend as to all causes of action on February 18, 2016. Although the court's order does not explain the ruling, at the hearing on the demurrers the court observed that Shetty had not established any irregularities in the chain of title to the deed of trust or in the foreclosure action by the senior lienholder: "So you are really a third party. You don't have standing to challenge the transfer." In response to Shetty's explanation that, although he had pleaded facts relating to the securitization of the debt and the foreclosure, his lawsuit was about title, not foreclosure, the court stated, "You don't have title to quiet."

A judgment of dismissal was entered on April 22, 2016. Shetty's earlier-filed notice of appeal is deemed filed immediately after entry of judgment. (Cal. Rules of Court, rule 8.104(d)(2).)

DISCUSSION

1. Standard of Review

A demurrer tests the legal sufficiency of the factual allegations in a complaint. We independently review the superior court's ruling on a demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100; *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20; *Schifando v.*

City of Los Angeles (2003) 31 Cal.4th 1074, 1081.) However, we are not required to accept the truth of the legal conclusions pleaded in the complaint. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; *Tepper v. Wilkins* (2017) 10 Cal.App.5th 1198, 1203.) We liberally construe the pleading with a view to substantial justice between the parties. (Code Civ. Proc., § 452; *Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 726; see *Schifando*, at p. 1081 [complaint must be read in context and given a reasonable interpretation].)⁴

“Where the complaint is defective, “[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his [or her] complaint.”” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971.) We determine whether the plaintiff has shown “in what manner he [or she] can amend [the] complaint and how that amendment will change the legal effect of [the] pleading.” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) “[L]eave to amend should *not* be granted where . . . amendment would be futile.” (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685; see generally *Ivanoff v. Bank of America, N.A.*, *supra*, 9 Cal.App.5th at p. 726.)

⁴ In light of our de novo review of the trial court’s order, Shetty’s argument the trial court denied him a fair hearing by improperly resolving factual disputes when sustaining Bank of America’s and HSBC’s demurrers is moot.

2. *Shetty Has Adequately Pleaded a Quiet Title Cause of Action Against HSBC*

To state a quiet title claim, a plaintiff must plead: (1) a description of the property that is the subject of the action; (2) the title of the plaintiff as to which a determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which the determination is sought; and (5) a prayer for the determination of the title of the plaintiff against the adverse claims. (Code Civ. Proc., § 761.020; see *Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1010.) The allegations of Shetty's first amended complaint, when read together with the information in the documents properly noticed by the trial court, satisfy each of these elements as to HSBC. Shetty has identified the property at issue and his claim of legal title to it. HSBC asserts an adverse claim of title to the property as a result of the June 8, 2015 trustee's sale. Shetty has prayed for a determination of his title against HSBC's claims as of the date of filing of the pleading. Nothing more is required at this early stage of the litigation.

Notwithstanding Shetty's allegations, HSBC argues the order sustaining the demurrer to the quiet title action should be affirmed because a person holding equitable title cannot prevail as against the person holding legal title (see, e.g., *G.R. Holcomb Estate Co. v. Burke* (1935) 4 Cal.2d 289, 297-299 [general rule is that holder of equitable title cannot state a cause of action to quiet title against the holder of legal title]; *Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2013) 217 Cal.App.4th 62, 81 [same]; *De Leonis v. Hammel* (1905) 1 Cal.App. 390, 394), and the trustee's deed upon sale, recorded on June 19, 2015 (after the filing of the first amended complaint but before the ruling on

HSBC's demurrer), demonstrated that legal title to the Tarzana property no longer belonged to Shetty, who thereafter had, at most, an equitable interest in the property. However, as this court explained in *Warren v. Merrill* (2006) 143 Cal.App.4th 96, 114, an exception to the general rule regarding the rights of the holders of legal and equitable title exists "when legal title has been acquired through fraud." In that case, available "remedies include quieting title in the defrauded equitable title holder's name and making the legal title holder the constructive trustee of the property for the benefit of the defrauded equitable titleholder." (*Ibid.*; accord, *Liberty National Enterprises*, at p. 81.) Shetty's allegations of tortious conduct, effectively claims of fraud in the securitization of Ben Levy's note and assignments of the deed of trust leading to HSBC's acquisition of legal title to the Tarzana property, fall squarely within this exception.

HSBC also contends Shetty, as a nonparty to the underlying note and deed of trust, lacked standing to challenge the validity of the various assignments preceding the foreclosure sale that resulted in HSBC's purported acquisition of legal title. That misconceives the nature of Shetty's quiet title action. Shetty has not attempted to plead a cause of action for wrongful foreclosure based on improper assignments of the note or deed of trust on the Tarzana property—a claim that may be asserted under certain circumstances by a home loan borrower. (See *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 935-936.) Nor does he dispute that, when he acquired title to the Tarzana property, it was subject to a deed of trust given as security for the original Ben Levy loan from Countrywide. However, relying on *Sciarratta v. U.S. Bank National Assn.* (2016) 247 Cal.App.4th 552, 564, which held an assignment of a

deed of trust by an entity that had nothing to assign is void, not merely voidable,⁵ Shetty argues HSBC's claim to legal title to the property fails under the well-established rule that a void instrument cannot be the foundation of a good title (see, e.g., *Firato v. Tuttle* (1957) 48 Cal.2d 136, 139; *Bryce v. O'Brien* (1936) 5 Cal.2d 615, 616). Accepting Shetty's allegations as true, as we must at the pleading stage, he has adequately alleged standing to pursue his quiet title action against HSBC. (Cf. *Iglesia Evangelica Latina, Inc. v. Southern Pacific Latin American Dist. of the Assemblies of God* (2009) 173 Cal.App.4th 420, 445 ["[t]o have standing, a party must be beneficially interested in the

⁵ Similar to Shetty's allegations that Ben Levy's loan was securitized after origination and there was nothing to be assigned to Bank of America in July 2011, the plaintiff in *Sciarratta v. U.S. Bank National Assn.*, *supra*, 247 Cal.App.4th 553 alleged, before Chase assigned her loan to Bank of America, it had already assigned the loan to Deutsche Bank. Accordingly, she alleged, the subsequent assignment to Bank of America and Bank of America's foreclosure sale were void. (*Id.* at pp. 563, 568.) Applying the Supreme Court's analysis in *Yvanova v. New Century Mortgage Corp.*, *supra*, 62 Cal.4th 919, the *Sciarratta* court agreed the second assignment was void, not voidable, and held the borrower had standing to assert a cause of action for wrongful foreclosure against Bank of America. (*Sciarratta*, at pp. 564-565 ["Chase, having assigned 'all beneficial interest' in Sciarratta's notes and deed of trust to Deutsche Bank in April 2009, could not assign again the same interests to Bank of America in November 2009" because "once a claim has been assigned, unless a contrary intention is shown, the assignment ""vests in the assignee the assigned contract or chose and all rights and remedies incidental thereto"""].)

controversy, and have ‘some special interest to be served or some particular right to be preserved or protected”].)

Although Shetty’s quiet title claim must be allowed to proceed against HSBC, it fails as to the other parties named as defendants because none asserts any claim to title to the Tarzana property. (See *West v. JPMorgan Chase Bank N.A.* (2013) 214 Cal.App.4th 780, 803 [demurrer to quiet title cause of action properly sustained; “based on the third amended complaint and the documents judicially noticed, none of the defendants named in the third amended complaint had adverse claims to title”].) Shetty’s allegation in his fifth cause of action (quiet title) that these defendants “purport[ed] to sell plaintiff’s property at another foreclosure sale, in violation of Plaintiff’s ownership rights to the Property” does not identify a claim of adverse title, and nothing else in the first amended complaint or the documents judicially noticed indicate Bank of America, MERS or the individual defendants have made any such claim.

3. *Shetty Has Failed To Demonstrate the Trial Court Erred in Sustaining the Demurrers to His Other Five Causes of Action*

A cardinal rule of appellate review is that the judgment or order of the trial court is presumed correct and prejudicial error must be shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see *Baldwin v. AAA Northern California, Nevada & Utah Ins. Exchange* (2016) 1 Cal.App.5th 545, 549 “[a]ppellant bears the burden of demonstrating that the trial court erred in sustaining the demurrer”].) To that end, the California Rules of Court require an appellant to identify points of law and error, to support them by argument and, if possible, citation of authority and to provide specific references to the record in support of those arguments. (Cal. Rules of Court, rule 8.204(a)(1)(B)-(C); see

Cahill v. San Diego Gas & Electric Co. (2011) 194 Cal.App.4th 939, 956 [“[a]ppellate briefs must provide argument and legal authority for the positions taken”]; *In re S.C.* (2006) 138 Cal.App.4th 396, 408 [“[t]o 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”].)

Absent compliance with these rules, we have no basis to evaluate the trial court’s decision in a particular matter. ““Although our review of a [demurrer] is de novo, it is limited to issues [that] have been adequately raised and supported in plaintiffs’ brief. [Citations.] Issues not raised in an appellant’s brief are deemed waived or abandoned.”” (*Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1282; see *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 [issues not raised in appellant’s opening brief are forfeited]; see also *Cahill v. San Diego Gas & Electric Co.*, *supra*, 194 Cal.App.4th at p. 956 [court will not develop appellants’ arguments for them]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [same].)

Although Shetty argues at some length that he has standing to challenge the validity of the various assignments of the deed of trust that ultimately led to the June 8, 2015 trustee’s sale and contends in general terms that HSBC’s and Bank of America’s demurrers should not have been sustained, he fails to demonstrate his first amended complaint adequately alleged causes of action for slander of title, cancellation of written instruments, violation of Civil Code section 1788.1 et seq., unfair business practices or declaratory relief different from the rights he seeks to vindicate in his quiet title cause of action. Indeed, he

does not even address these claims in his briefs on appeal, let alone identify the elements of each cause of action and explain how the allegations in his pleading satisfied those elements. The court's order sustaining the demurrers to these five causes of action must be affirmed. (See *Loeffler v. Target Corp.*, *supra*, 58 Cal.4th at p. 1100.)

4. *Leave To Amend Was Properly Denied*

Although Shetty correctly states the trial court abuses its discretion if it sustains a demurrer without leave to amend if the pleading defects can be cured, he does not identify in what manner he would amend his first amended complaint if given an opportunity to do so or show how permitting amendment would change the legal effect of his pleading. As discussed, this is Shetty's burden. (See *Schifando v. City of Los Angeles*, *supra*, 31 Cal.4th at p. 1081 ["plaintiff has the burden of proving that an amendment would cure the defect"]; *Goodman v. Kennedy*, *supra*, 18 Cal.3d at p. 349; *Ivanoff v. Bank of America, N.A.*, *supra*, 9 Cal.App.5th at p. 735.) Accordingly, the demurrers to the first through fourth and sixth causes of action were properly sustained without leave to amend.

DISPOSITION

The judgment of dismissal is reversed as to HSBC, and the cause remanded with directions to the trial court to vacate its order sustaining HSBC's demurrer without leave to amend and to enter a new order overruling the demurrer to the fifth cause of action to quiet title and sustaining the demurrer to all other causes of action without leave to amend. The judgment is affirmed as to Bank of America, MERS and the individual defendants. The parties are to bear their own costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.