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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARCOS CASTRO et al., Plaintiffs and Appellants, v. AURORA LOAN SERVICES, LLC, et al., Defendants and Respondents.	B247114 (Los Angeles County Super. Ct. No. LC097054)

APPEAL from judgments of the Superior Court of Los Angeles County. James A. Steele, Judge. Affirmed.

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

Wolfe & Wyman, Stuart B. Wolfe, Samantha N. Lamm for Defendant and Respondent Aurora Loan Services, LLC, Mortgage Electric Registration Systems, Inc., and Nationstar Mortgage, LLC.

Doll Amir & Eley, Hunter R. Eley, Amy I. Borlund for Defendant and Respondent GreenPoint Mortgage Funding, Inc.

Plaintiffs contend that defendants provided them with a home loan that they could not afford, improperly securitized the loan, and have no standing to foreclose. Plaintiffs' lawsuit seeks to impose nonexistent requirements on the nonjudicial foreclosure process and to hold defendants responsible for conduct that does not give rise to liability. We find that that the trial court properly sustained defendants' demurrers without leave to amend.

BACKGROUND

The operative complaint

Marcos and Jenett Castro are the plaintiffs and appellants in this lawsuit. Defendants and respondents are Aurora Loan Services, LLC (Aurora), Mortgage Electronic Registration Systems, Inc. (MERS), Nationstar Mortgage, LLC (Nationstar), and GreenPoint Mortgage Funding, Inc. (GreenPoint).

The operative first amended complaint (FAC) contains 10 purported causes of action: (1) actual fraud; (2) cancellation of contract; (3) violation of Business and Professions Code section 17200 et seq.; (4) breach of covenant of good faith and fair dealing; (5) declaratory relief; (6) violation of finance lender law; (7) conspiracy to defraud; (8) breach of fiduciary duty; (9) equitable estoppel; and (10) lack of standing.

The FAC alleges in pertinent part as follows: In April 2007, plaintiffs obtained a loan from GreenPoint in the principal amount of $468,000 to purchase a house in Los Angeles. The loan had an adjustable rate, with a minimum interest rate of 2.750 percent and a maximum rate of 12.250 percent. Plaintiffs executed an adjustable rate note (the note) with these terms.

Plaintiffs allege that their mortgage broker, Sunquest Real Estate Funding, Inc. (Sunquest), and GreenPoint misrepresented plaintiffs' income so that they would qualify for the loan, even though plaintiffs could not even make the first payment owed. Plaintiffs further allege that Sunquest and GreenPoint charged excessive and bogus fees for work that was not performed, including for a "processing" fee, a "credit report" fee, a "doc prep" fee, a "review appraisal" fee, and an "underwriting" fee.

Plaintiffs defaulted on their loan payments in 2011. They sought the assistance of a loan servicer, Aurora, to resolve the defaults and modify the loan terms. Plaintiffs allege that Aurora refused to evaluate their financial situation and did not offer any financial relief by modification or other means.

Plaintiffs are informed and believe that their loan has been bundled and securitized in a security referred to as the GreenPoint Mortgage Funding Trust, Series 2007 AR-3 (the trust), for which U.S. Bank National Association (US Bank) is the trustee. According to the FAC, US Bank asserts that it is the holder of plaintiffs' note, but plaintiffs allege that US Bank is merely acting in the capacity of an agent for unknown investors in the trust and holds title to the property only in its capacity as trustee. Aurora is the master servicer for the trust, and is responsible for servicing individual loans. Defendant MERS was at all relevant times the beneficiary to plaintiffs' loan.[1]

Notice of default has been served, but foreclosure of plaintiffs' property has not yet occurred. Plaintiffs contend that defendants do not have the right to foreclose on the property.

Demurrers

Demurrers were filed by GreenPoint, Aurora, MERS, and Nationstar.[2] After initial briefing, the trial court allowed plaintiffs to submit further briefing explaining how they could amend the FAC to sufficiently allege viable causes of action. Further briefing was submitted, and the trial court ruled on the demurrers in November 2012, sustaining the demurrers without leave to amend.

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[1] Although it is unclear from the record, it appears that defendant Nationstar was at some point substituted into the case in place of a Doe defendant. There are no allegations specific to Nationstar, though the FAC does contain general allegations stating that Doe defendants were agents and/or employees of the named defendants.

[2] The FAC named additional entities as defendants. In their appellate papers, plaintiffs offer no explanation of the status of the lawsuit as to these other defendants. It appears from the record that they might never have been served.

Judgment was entered in favor of Aurora, MERS, and Nationstar on December 14, 2012. After this Court informed plaintiffs pursuant to Government Code section 68081 that the record contained no judgment as to GreenPoint, plaintiffs submitted a judgment entered in GreenPoint's favor on May 7, 2014.

DISCUSSION

We review the ruling sustaining the demurrers de novo, exercising independent judgment as to whether the complaint states a cause of action as a matter of law. (*Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110, 1115.) We give the complaint a reasonable interpretation, assuming all properly pleaded material facts are true, but not assuming the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) We may consider matters that are properly judicially noticed. (*Four Star Electric, Inc. v. F & H Construction* (1992) 7 Cal.App.4th 1375, 1379.)

A demurrer tests the legal sufficiency of the complaint. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As such, we are not concerned with the difficulties a plaintiff may have in proving the claims made in the complaint. (*Desai v. Farmers Ins. Exchange*, *supra*, 47 Cal.App.4th at p. 1115.) We are also unconcerned with the trial court's reasons for sustaining the demurrers, as it is the ruling, not the rationale, that is reviewable. (*Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 631; *Sackett v. Wyatt* (1973) 32 Cal.App.3d 592, 598, fn. 2.)

When a demurrer is sustained without leave to amend, "we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Plaintiffs' FAC alleged 10 causes of action. On appeal, they abandon the majority of these, and only argue the validity of three causes of action: "lack of standing," declaratory relief, and violations of Business and Professions Code section 17200.

I. Lack of Standing

The FAC alleges that defendants have no right to foreclose on the property because they failed to perfect a security interest in the property, did not comply with the terms of their own securitization requirements, and falsely prepared documents required to foreclose. Plaintiffs are informed and believe that the only individual who has standing to foreclose is the holder of the note, and that none of the defendants has an interest in the note. Plaintiffs are further informed and believe that the note was not properly transferred to US Bank as the trustee for the securitized trust. Moreover, according to the FAC, the note and the related deed of trust executed in favor of the original lender, GreenPoint, were not properly assigned and transferred to defendants operating pooled mortgage funds or trusts. The note was to be sold to a sponsor and then sold to a depositor, after which time it could validly be pooled into the trust. According to the FAC, these transfers did not occur, and with a trust closing date of May 31, 2007, the note was not validly a part of the trust. Thus, according to plaintiffs, any assignments of the deed of trust beyond the closing date were void. Plaintiffs request that, based on these deficiencies, the power of sale contained in the note and deed of trust be deemed to have no force or effect.

Plaintiffs assert that these allegations are sufficient to allege a cause of action of "lack of standing" to foreclose. California courts, however, do not permit debtors such as plaintiffs to delay the nonjudicial foreclosure process by challenging the authority of a beneficiary or its agent to pursue foreclosure. (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal App.4th 497, 511 (*Jenkins*); *Debrunner v. Deutsche Bank National Trust Co.* (2012) 204 Cal.App.4th 433, 440-442; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1154-1157 (*Gomes*).) As stated in *Gomes*, this sort of preemptive action would impose an "additional requirement" that the entity seeking to foreclose "demonstrate in court that it is authorized to initiate a foreclosure. . . . [S]uch a requirement would be inconsistent with the policy behind nonjudicial foreclosure of providing a quick, inexpensive and efficient remedy." (*Gomes*, at p. 1154, fn. 5.)

Plaintiffs rely on *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079 (*Glaski*), in which the court noted: "The theory that a foreclosure was wrongful because it was initiated by a nonholder of the deed of trust has also been phrased as (1) the foreclosing party lacking standing to foreclose or (2) the chain of title relied upon by the foreclosing party containing breaks or defects." (*Id.* at p. 1093.) The *Glaski* court found that the plaintiff could properly allege that a foreclosure was wrongful because the subject deed of trust allowed only the lender-beneficiary or its assignee to cause a property to be sold after default, but the entity that initiated the foreclosure was not a holder of the deed of trust. (*Id.* at pp. 1093-1097.) In order to properly allege a cause of action under this theory of wrongful foreclosure, however, a plaintiff must do more than "simply stat[e] that the defendant who invoked the power of sale was not the true beneficiary under the deed of trust. Rather, a plaintiff asserting this theory must allege facts that show the defendant who invoked the power of sale was not the true beneficiary." (*Id.* at p. 1094.)

Plaintiffs have not met the pleading requirements outlined in *Glaski*. The differences between the allegations and facts present in *Glaski* and those in this case are significant. In *Glaski*, the plaintiff's home had already been foreclosed. (218 Cal.App.4th 1079, 1086.) Here, plaintiffs vaguely allege that foreclosure is likely to occur. Their apparent aim is to stop a nonjudicial foreclosure. But, as explained in *Gomes*, imposing an "additional requirement" on a beneficiary that it is "authorized to initiate a foreclosure" would subvert the nonjudicial foreclosure process, which is intended to be inexpensive and efficient. (192 Cal.App.4th 1149, 1154, fn. 5.) Further, plaintiffs' allegations do not go beyond "simply stating that the defendant who invoked the power of sale was not the true beneficiary under the deed of trust," the sort of allegations that *Glaski* held were insufficient. (*Glaski, supra*, 218 Cal.App.4th at p. 1094; see also *Herrera v. Federal National Mortgage Assn.* (2012) 205 Cal.App.4th 1495, 1506 [plaintiff failed to plead specific facts demonstrating transfer of note and deed of trust were invalid].) The FAC does not even state which defendant would be likely to

invoke a power of sale. Thus, unlike in *Glaski*, plaintiffs' claim is not only preemptive, it is also speculative, and it is barred for the reasons stated in *Gomes* and *Glaski*.

Therefore the trial court properly sustained the demurrer to this cause of action.

II. Declaratory Relief

A declaratory relief action is dependent on two elements: (1) an actual, present controversy relating to the parties' rights and obligations that (2) is a proper subject of declaratory relief. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80; *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909.)

In the FAC, plaintiffs allege that the subject loan agreement is void and unenforceable because defendants knew that plaintiffs would not be able to afford the mortgage payments on the loan. Aside from the fact that the FAC fails to allege that there exists an actual, present controversy between the parties, the FAC's allegations are insufficient to support declaratory relief in favor of plaintiffs. It is well established that "as a general rule, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money." (*Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.) "A commercial lender pursues its own economic interests in lending money," and "'owes no duty of care to the [borrowers] in approving their loan.'" (*Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 436 (*Perlas*).) Plaintiffs fail to explain why these principles do not apply here.

In their appellate brief, plaintiffs assert that they should be allowed leave to amend the FAC to allege additional facts relating to defendants' involvement in the allegedly improper securitization of plaintiffs' loan, as they alleged in their lack of standing to foreclose claim. The plaintiff in *Jenkins* brought an almost identical declaratory relief claim. The Court of Appeal found that the claim was improper because, as in *Gomes, supra*, 192 Cal.App.4th 1149, 1154, footnote 5, it constituted a preemptive action seeking to hinder the nonjudicial foreclosure process, without the support of a specific factual basis. (*Jenkins, supra*, 216 Cal.App.4th 497, 512-513.) Moreover, as in this case, in *Jenkins* it was undisputed that a secured home loan debt existed and that the plaintiff

defaulted, which triggered the right to initiate the judicial foreclosure process. (*Id.* at p. 514.) Any alleged securitization issues did not render the plaintiff's default irrelevant, and thus allegations of an improper securitization did not give rise to an actual, present controversy involving the plaintiff. (*Id.* at p. 515.) The same analysis applies here. Plaintiffs have not identified allegations upon which a proper declaratory relief claim can be based.

III. Business and Professions Code section 17200

Business and Professions Code section 17200 et seq., commonly referred to as the unfair competition law, "prohibits, and provides civil remedies for, unfair competition" (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320), defined as "any unlawful, unfair or fraudulent business act or practice" (Bus. & Prof. Code, § 17200). Under the unfair competition law a person or entity who "engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction." (Bus. & Prof. Code, § 17203.) The law "'"borrows" violations of other laws and treats them as unlawful practices' that the unfair competition law makes independently actionable." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) A person has standing under Business and Professions Code section 17204 if he or she "has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, § 17204.)

In the FAC, plaintiffs allege that GreenPoint engaged in deceptive business practices by funding a loan that plaintiffs could not afford. GreenPoint, however, had no fiduciary duty to plaintiffs and no obligation to determine whether they could afford the payments on the home. (*Perlas, supra,* 187 Cal.App.4th 429, 436.) Plaintiffs also allege that Aurora violated the unfair competition law by refusing to modify plaintiffs' loan, thereby allegedly violating Civil Code section 2923.5. As found by the trial court, however, Civil Code section 2923.5 does not require the modification of a loan. (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 526.) Plaintiffs do not address this ruling on appeal and have not demonstrated any error.

Plaintiffs contend that they can amend their complaint to state a proper cause of action under the unfair competition law. In support of this contention, plaintiffs briefly list the conclusory statements that defendants: instituted improper foreclosure proceedings to generate unwarranted fees; executed and recorded false and misleading documents; executed and recorded documents without legal authority; failed to disclose the principal for which documents were executed and recorded; acted as beneficiaries and trustees without legal authority; and failed to notify plaintiffs of an assignment of their loan. Plaintiffs do not demonstrate that these conclusory statements can be supported by allegations of material facts, however. In reviewing a demurrer, we regard properly pleaded material facts as true, but we do not assume the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hospital Dist.*, *supra*, 2 Cal.4th 962, 967; see also *Ramirez v. Wong* (2010) 188 Cal.App.4th 1480, 1488 [holding that complaint which alleged no facts in support of conclusory allegation was deficient].)

Nor do plaintiffs explain how these conclusory allegations would cure the deficiencies in the FAC as found by the trial court and as discussed in this opinion. Indeed, plaintiffs provide no legal argument discussing the effect of their proposed amendments whatsoever. We will not develop plaintiffs' arguments for them. (See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 ["We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived"]; *Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125-126.) When a complaint's allegations are insufficient, "plaintiffs must identify some legal theory or state of facts they wish to add by way of amendment that would change the legal effect of their pleading." (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 520, fn. 16.) Plaintiffs have failed to do so.

Accordingly, reversal of the judgments is not warranted.

DISPOSITION

The judgments are affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

FERNS, J.*

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