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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

SATISH SHETTY, Plaintiff and Appellant, v. GOLDMAN SACHS MORTGAGE COMPANY et al., Defendants and Respondents.	B263938 (Los Angeles County Super. Ct. No. LC101131)

APPEAL from judgments of the Superior Court of Los Angeles County, Huey P. Cotton, Judge. Affirmed.

Satish Shetty, in pro. per., for Plaintiff and Appellant.

Wright, Finlay & Zak, Jonathan M. Zak and Marvin B. Adviento, for Defendants and Respondents, Ocwen Loan Servicing, LLC and Litton Loan Servicing, LP.

Severson & Werson, Jan T. Chilton and Kerry W. Franich, for Defendant and Respondent, Wells Fargo Bank, N.A.

After Abdolhamid Heydarzadeh defaulted on a home loan secured by a deed of trust on his property and following a notice of foreclosure, his house was sold in a trustee's sale. More than four months later, Heydarzadeh, through an attorney-in-fact, executed a quitclaim deed and assignment purporting to transfer the property to Satish Shetty and assigning Shetty all claims and causes of action relating to the property. Representing himself, Shetty sued various entities involved in Heydarzadeh's loan and foreclosure proceedings, including the lender, loan servicer and foreclosure purchaser. Shetty alleged the defendants improperly securitized the loan and caused false and fraudulent documents to be recorded, which resulted in depriving Shetty of his property. The trial court sustained without leave to amend the demurrers of Wells Fargo Bank, N.A., Litton Loan Servicing LP (Litton) and Ocwen Loan Servicing, LLC (Ocwen), finding Shetty was without standing to pursue the claims and the pleading failed to state, and could not be amended to state, a legally cognizable claim. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Loan, Substitution of Trustee and Assignments*

On December 26, 2007 Heydarzadeh executed a promissory note and deed of trust encumbering real property located at 18418 Bessemer Street, Los Angeles, to obtain a home loan in the principal amount of $632,800 from Wells Fargo. The deed of trust named Wells Fargo as the lender (that is, the beneficiary) and Fidelity National Title Insurance Company as the trustee. The loan was funded on January 7, 2008 at which time the deed of trust was recorded with the Los Angeles County Recorder's Office. Shetty alleged at some point between execution of the note and deed of trust and before the funding of the loan, Wells

Fargo sold or pledged its interest in the note and deed of trust to a trust managed by the Federal National Mortgage Association (Fannie Mae).

On January 7, 2009 First American Title Insurance Company, acting as attorney in fact for Wells Fargo, recorded a substitution of trustee with the County Recorder's Office stating First American Loanstar Trustee Services was the new trustee under the deed of trust.[1]

On April 7, 2009 Wells Fargo executed an assignment of deed of trust assigning its rights in the deed of trust to MTGLQ Investors, L.P. (MTGLQ).[2] On February 24, 2010 a second assignment of deed of trust was executed by MTGLQ through its attorney in fact, Litton. The 2010 assignment assigned all rights in Heydarzadeh's deed of trust to Goldman Sachs Mortgage Company (Goldman). Both assignments were recorded with the County Recorder on March 18, 2011.

2. *The Trustee's Sale*

In April 2012 Goldman, through its authorized agent, Ocwen, initiated nonjudicial foreclosure proceedings pursuant to Civil Code section 2923.5 et seq. A notice of default and election to sell was issued and recorded, followed by a notice of trustee's sale. The property was sold on January 4, 2013 for $375,000 to Goldman, the successful bidder at the trustee's sale. The trustee's deed upon sale was recorded on January 15, 2013.

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[1] The deed of trust authorized Wells Fargo, at its option and from time to time, to appoint a successor trustee.

[2] The documents executed by Heydarzadeh authorized Wells Fargo to sell the note together with the deed of trust "one or more times without prior notice to Borrower."

3. *The Quitclaim Deed*

On May 24, 2013 Heydarzadeh, through an attorney in fact, executed a quitclaim deed purportedly granting the property to Shetty. The quitclaim deed also assigned Shetty "any and all claims and causes of action arising out of and related to" the property. The quitclaim deed was recorded the day it was executed.

4. *Shetty's Complaint*

On December 12, 2013 Shetty, representing himself, sued nine defendants, including Wells Fargo, Litton and Ocwen, in Los Angeles Superior Court. On September 17, 2014 Shetty filed the operative first amended complaint alleging 13 causes of action against various groupings of defendants: (1) civil conspiracy; (2) fraudulent misrepresentation; (3) slander of title; (4) conversion; (5) negligence; (6) violation of Civil Code, section 1788 et seq.; (7) violation of Business and Professions Code section 17200; (8) cancellation of written instruments; (9) quiet title; (10) declaratory relief; (11) accounting; (12) violation of Civil Code section 2934a, subdivision (a)(1), and (13) constructive trust.[3] Shetty's claims were primarily based on two theories: First, the pre-funding sale/pledge of Heydarzadeh's deed of trust was improper and therefore Wells Fargo never had a security interest in the property; second, the substitution of trustee and assignments were recorded by unauthorized entities,

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[3] The causes of action for slander of title, negligence, quiet title, accounting, violation of Civil Code section 2934a, subdivision (a)(1), and constructive trust were not alleged against Wells Fargo, Ocwen and Litton and are not at issue in this appeal.

were forgeries or fabricated documents and contained other irregularities making them legally invalid. Shetty alleged the recording of these invalid documents caused him to suffer damages by depriving him of his property. The first amended complaint attached as exhibits the recorded quitclaim deed, deed of trust, substitution of trustee, assignments, notice of default, notice of sale and trustee's deed upon sale.

5. *The Demurrers*

Wells Fargo, Litton and Ocwen demurred to the causes of action directed to them, arguing, because the quitclaim deed was executed after the foreclosure sale had taken place, Heydarzadeh did not convey title to Shetty and Shetty had no standing to bring any of the claims. They also argued the first amended complaint failed to allege facts sufficient to state a cause of action.

The trial court sustained the demurrers without leave to amend.[4] The trial court agreed Shetty had no interest in the property because the quitclaim deed was executed after Heydarzadeh had been divested of the property through the foreclosure sale; Shetty, therefore, lacked standing to pursue his claims.[5] The trial court also ruled the first amended complaint failed to state a legally cognizable claim.

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[4] Goldman and First American Title Insurance Company also filed demurrers to the first amended complaint that were sustained without leave to amend. That ruling is not the subject of this appeal.

[5] The property had been transferred by Heydarzadeh in late 2007 and thereafter retransfered multiple times between 2007 and 2011, well before both the foreclosure sale and Heydarzadeh's quitclaim deed to Shetty. First, Heydarzadeh transferred his interest in the property to Western United LLC.

On April 27, 2015 Shetty filed a notice of appeal from the judgment of dismissal after the order sustaining Ocwen and Litton's demurrer. On August 11, 2015 Shetty filed a notice of appeal from the judgment of dismissal after the order sustaining Wells Fargo's demurrer. We consolidated the appeals.

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 pleading alleges facts sufficient to state a cause of action or discloses a complete defense. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100; *McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) 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,

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Western United then transferred it to 18418 Bessemer, Inc., which transferred it to West Valley United, Inc., which transferred it back to 18418 Bessemer, which transferred it to Besstar Properties, Inc. In support of its ruling Shetty lacked standing because Heydarzadeh had no interest in the property when he signed the quitclaim deed, the trial court took judicial notice of the recorded deeds documenting those transactions. Shetty contends Heydarzadeh retained title to the property despite those transfers based on a declaration from Heydarzadeh's son that each entity in the chain of title was simply an unregistered fictitious business name and/or alter ego of Heydarzadeh. Although that argument seems questionable, we need not address the issue because we affirm the order dismissing Shetty's actions on alternate grounds.

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; *Yhudai v. IMPAC Funding Corp.* (2016) 1 Cal.App.5th 1252, 1257.) We liberally construe the pleading with a view to substantial justice between the parties. (Code Civ. Proc., § 452; *Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336, 1340; see *Schifando*, at p. 1081 [complaint must be read in context and given a reasonable interpretation].)

2. *The First Amended Complaint Did Not Allege Facts with Sufficient Particularity To State a Claim for Fraudulent Misrepresentation*

Shetty's claim for fraudulent misrepresentation against Ocwen and Litton[6] focused on the February 24, 2010 assignment of deed of trust in which MTGLQ assigned its rights in the subject property to Goldman. The assignment was signed by Richard Williams, as a vice president of Litton, acting as attorney in fact for MTGLQ. Goldman's address is listed on the assignment as "c/o Litton Loan Servicing LP . . . ." [7]

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[6] Wells Fargo was not named in the fraudulent misrepresentation claim.

[7] Other than stating the claim is brought against Ocwen, the fraudulent misrepresentation cause of action does not allege any fraudulent actions or miststatements by Ocwen. Shetty simply treated Ocwen and Litton as one entity throughout his complaint. Because neither Ocwen nor Litton has challenged that premise, for the purposes of this appeal we consider the allegations against Litton to include the allegations against Ocwen and vice versa.

The first amended complaint alleged Litton was not actually an attorney in fact for MTGLQ and "there was no such person" as Richard Williams, but instead, the assignment was signed by a "robo-signer who has assumed the name of Richard Williams . . . ." The pleading further alleged the assignment was "comprised of cutting and pasting different documents." Based on those allegations, the first amended complaint asserted the assignment to Goldman was ineffective and Ocwen and Litton had engaged in fraudulent misrepresentation by recording, causing to be recorded, or approving the recording of a false document containing material misrepresentations of fact. Shetty further alleged Ocwen and Litton knew the documents contained false statements and Heydarzadeh and Shetty relied on the representations in the documents. Finally, Shetty alleged he was harmed by his reliance because a cloud was placed on title to the property and, as a result of the assignment, Heydarzadeh had made payments to defendants under a false impression money was owed to them.

The elements of a fraudulent misrepresentation claim are "'(1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it . . . ; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff.'" (*Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 434, italics omitted; see *Robinson Helicopter Co., Inc. v. Dana Corp*. (2004) 34 Cal.4th 979, 991.) Fraud, however, "must be pled specifically;

general and conclusory allegations do not suffice. [Citations.] 'Thus "'the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect.'" [Citation.] [¶] This particularity requirement necessitates pleading facts which "show how, when, where, to whom, and by what means the representations were tendered."'" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

Shetty's fraudulent misrepresentation claim against Ocwen and Litton was not pleaded with the requisite specificity. The first amended complaint provided absolutely no factual detail to support the general, conclusory allegations Litton was not an attorney in fact for MTGLQ, the document was signed by a robo-signer, or the document was cut and pasted from separate documents. While a complaint may include allegations based on information and belief, it "is insufficient if it 'merely assert[s] the facts so alleged without alleging such information that "lead[s] [the plaintiff] to believe that the allegations are true."'" (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1158-1159.) Shetty has not pleaded any specific facts leading him to believe his allegations are true or further supporting his conclusions.

In addition, the notarization of the assignment, apparent on the face of the copy attached as an exhibit to Shetty's pleading, contradicts Shetty's allegations. The notarization identifies Williams as vice president of Litton, and the notary's acknowledgement constitutes prima facie evidence Williams signed the assignment. (Evid. Code, § 1451.) Facts appearing in the assignment and notarization that contradict the allegations in the complaint must be accepted as true when evaluating the sufficiency of Shetty's claim. (*Nolte v. Cedars-Sinai Medical*

Center (2015) 236 Cal.App.4th 1401, 1406 ["'[f]acts appearing in exhibits attached to the first amended complaint also are accepted as true and are given precedence, to the extent they contradict the allegations'"].)

3. *The Cause of Action for Conversion Against Wells Fargo Is Time Barred*[8]

Shetty's conversion claim against Wells Fargo alleged the pre-funding sale of the note and deed of trust constituted an improper conversion of the debt instruments into a security. Shetty alleged Heydarzadeh had the right to possess the debt instruments if Wells Fargo could not fund the loan and, by converting the debt instruments into a security, Wells Fargo denied Heydarzadeh his rights of possession. Shetty's conversion claim is time-barred.

The governing limitation period for conversion claims is three years from the time the claim has accrued. (Code Civ. Proc., § 338, subd. (c); see generally Code Civ. Proc., § 312 [an action must be "commenced within the periods prescribed in this title, after the cause of action shall have accrued"].) Traditionally, a claim accrues ""'when [it] is complete with all of its elements"—those elements being wrongdoing [or breach], harm, and causation.'" (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191; accord, *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 815.) Because the harm caused by conversion occurs immediately upon the interference with a person's right of possession in personal property, "'[t]he statute of limitations for conversion is triggered

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[8] The conversion claim was not alleged against Litton and Ocwen.

by the act of wrongfully taking the property.'" (*AmerUS Life Ins. Co. v. Bank of America, N.A.* (2006) 143 Cal.App.4th 631, 639; see *Bono v. Clark* (2002) 103 Cal.App.4th 1409, 1433.)

Shetty alleged the conversion took place between December 26, 2007 and January 7, 2008. Thus, the limitations period for his conversion claim expired at the latest on January 7, 2011. Because the complaint was not filed until December 2013, the claim is untimely.

To be sure, courts have held the statute of limitations may be tolled in a conversion action when the defendant "fraudulently conceals the relevant facts or where the defendant fails to disclose such facts in violation of his or her fiduciary duty to the plaintiff." (*AmerUS Life Ins. Co. v. Bank of America, N.A.*, *supra*, 143 Cal.App.4th at p. 639.) Shetty has not alleged any facts that would support tolling under either theory, and his appellate briefs fail to address the statute of limitation argument at all. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [appellant forfeits issue not raised or supported by substantive argument].) In addition, Shetty could not claim Wells Fargo violated a fiduciary duty because lenders generally have no fiduciary duty to borrowers. (*Perlas v. GMAC Mortgage, LLC*, *supra*, 187 Cal.App.4th at p. 436 ["'[a]bsent special circumstances . . . a loan transaction is at arm's length and there is no fiduciary relationship between the borrower and lender'"].)

4. *The First Amended Complaint Did Not Allege Facts Sufficient To State a Claim for Violation of Civil Code Section 1788 et seq.*

The Rosenthal Fair Debt Collection Practices Act (Civ. Code, § 1788 et seq.) was enacted "to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection

of consumer debts . . . ." (Civ. Code, § 1788.1, subd. (b).) The Rosenthal Act applies to the collection of consumer debts resulting from "consumer credit transactions" in which "property, services or money is acquired on credit . . . primarily for personal, family, or household purposes." (Civ. Code, § 1788.2, subd. (e).) The prohibited unfair or deceptive practices include use of threats, harassment, profanity and making false representations about the nature or status of the debt. (Civ. Code, §§ 1788.10-1788.16.)

Shetty alleged Wells Fargo, Litton and Ocwen violated the Rosenthal Act by misrepresenting the status of Heydarzadeh's debt as being due to certain defendants even though the note and deed of trust had not been validly assigned to them. Shetty further alleged Wells Fargo, Litton and Ocwen used deceptive means to collect the debt, although the first amended complaint did not specify the precise deceptive means used. The only collection-related activities alleged in the first amended complaint were directly related to the foreclosure, specifically the issuance and recording of the notice of default and election to sell and notice of trustee's sale.

A number of federal district courts in California have held, "'the law is clear that foreclosing on a deed of trust does not invoke the statutory protections of the [Rosenthal Act].'" (*Sipe v. Countrywide Bank* (E.D. Cal. 2010) 690 F.Supp.2d 1141, 1151; see, e.g., *Rosal v. First Federal Bank of California* (N.D. Cal. 2009) 671 F.Supp.2d 1111, 1135; *Izenberg v. ETS Services, LLC* (C.D. Cal. 2008) 589 F.Supp.2d 1193, 1199; but see *In re Ganas* (Bankr. E.D.Cal. 2014) 513 B.R. 394, 401-409 [holding Rosenthal Act does not create exception for collection of secured debts].) Although many of these decisions contain little or no analysis,

merely citing prior case law for this principle, the rationale for excluding foreclosure practices from the Rosenthal Act appears to trace back to an Oregon federal district court case in which the court ruled the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.) was not implicated by foreclosure proceedings: "'[F]oreclosing on a trust deed is distinct from the collection of the obligation to pay money. The FDCPA is intended to curtail objectionable acts occurring in the process of collecting funds from a debtor. But, foreclosing on a trust deed is an entirely different path. Payment of funds is not the object of the foreclosure action. Rather, the lender is foreclosing its interest in the property . . . . [¶] Foreclosure by the trustee is not the enforcement of the obligation because it is not an attempt to collect funds from the debtor.'" (*Moriarity v. Nationstar Mortgage, LLC* (E.D.Cal., July 3, 2013, No. 1:13-cv-00855-AWI-SMS) 2013 U.S. Dist. Lexis 93825, at *13-14, quoting *Hulse v. Ocwen Federal Bank, FSB* (D. Or. 2002) 195 F.Supp.2d 1188, 1204; see also *Ho v. ReconTrust Company, NA* (9th Cir. Oct. 19, 2016, No. 10-56884) 340 F.3d 618, 621 [affirming *Hulse* and stating: "The object of a nonjudicial foreclosure is to retake and resell the security, not to collect money from the borrower. California law does not allow for a deficiency judgment following non-judicial foreclosure. This means that the foreclosure extinguishes the entire debt even if it results in a recovery of less than the amount of the debt. . . . Thus, actions taken to facilitate a non-judicial foreclosure, such as sending the notice of default and notice of sale, are not attempts to collect 'debt' as that term is defined by the FDCPA."].) We find this reasoning persuasive.

Shetty acknowledges the Rosenthal Act does not apply to foreclosing on a deed of trust but attempts to salvage his claim by

arguing it relates not to collection of "a residential mortgage loan[]" but rather to "debt instruments converted by the defendants." This argument is nonsensical. Shetty seems to be asserting, even though the Rosenthal Act does not apply to foreclosure proceedings, it does apply to the collection of a debt secured by a deed of trust. However, what Shetty seeks to label the collection of such a debt is accomplished in this situation through nonjudicial foreclosure proceedings. Collection cannot be separated from foreclosure, and Shetty has cited no authority to the contrary.

5. *The First Amended Complaint Did Not Allege Facts Sufficient To State a Claim for Violation of Business and Professions Code Section 17200 Against Ocwen and Litton*[9]

California's unfair competition law (Bus. & Prof. Code, § 17200 et seq.) (UCL) prohibits, and provides civil remedies for, unfair competition, which it defines as "any unlawful, unfair or fraudulent business act or practice." (*Id.* at § 17200.) In 2004 California voters "materially curtailed the universe of those who may enforce" the UCL by enacting Proposition 64. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320.) Proposition 64 limited private standing under the UCL to any "'"person who has suffered injury in fact and has lost money or property" as a result of unfair competition.'" (*Id.* at pp. 320-321, quoting Bus. & Prof. Code, § 17204.) "'The phrase "as a result of" in its plain and ordinary sense means "caused by" and requires a showing of a causal connection or reliance . . . .'" (*Kwikset Corp*., at p. 326.)

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[9] The claim for violation of Business and Professions Code section 17200 was not alleged against Wells Fargo.

Thus, in order to pursue a claim under the UCL, a plaintiff must "(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic injury,* and (2) show that the economic injury was the result of, i.e., *caused by,* the unfair business practice . . . that is the gravamen of the claim." (*Id.* at p. 322; accord, *Sarun v. Dignity Health* (2014) 232 Cal.App.4th 1159, 1166.) Further, the injury in fact must be suffered personally by the plaintiff—"under the unfair competition law an injured [individual's] assignment of rights cannot confer standing on an uninjured assignee." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1002.)

Shetty fails to address directly whether the first amended complaint alleged injury and causation sufficiently to state a claim under the UCL. Reviewing the pleading liberally, we conclude it did not. The first amended complaint averred the injuries suffered because of Ocwen and Litton's purported unfair business practices were loss of money and property resulting from an improper foreclosure, recording of misleading documents and demand and acceptance of payments for nonexistent debts. However, any alleged injuries resulting from those actions affected only Heydarzadeh—all the actions complained of were taken when Heydarzadeh owned the property and resulted in a loss only to Heydarzadeh. Shetty failed to allege any of those actions caused injury to him personally. Recovery based on a derivative loss and an assignment of rights would contravene the statutory intent that only the party personally injured recover under the UCL. (See *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court*, *supra,* 46 Cal.4th at p. 1002 ["[t]o allow a noninjured assignee of an unfair competition claim to stand in the shoes of the original, injured claimant would confer

standing on the assignee in direct violation of the express statutory requirement in the unfair competition law"]; see also *Drazan v. Atlantic Mutual Ins. Co.* (N.D. Cal. June 29, 2010, No. C 10-01371 SI) 2010 U.S. Dist. Lexis 64345, *7-9 [shareholders/assignees' allegation of direct injury by virtue of diminution in stock value insufficient to allege standing for UCL claim when no unfair business practices alleged to have directly affected shareholder/assignees].)

As the purported current owner of the property, Shetty could possibly allege a direct loss from the cloud that he contends exists on the property's title. But Shetty has not alleged any uncertainty in the chain of title was caused by unfair business practices. To the contrary, any injury Shetty suffered because of uncertain title was caused by his decision to accept a quitclaim deed from Heydarzadeh knowing certain documents had been recorded and a foreclosure sale had already taken place. Shetty has not even attempted to allege causation: The first amended complaint contains no statement Shetty would not have accepted the quitclaim deed but for the allegedly unfair practices of Ocwen and Litton. In the absence of any such allegations, Shetty failed to adequately state a claim for violation of the UCL. (See *Kwikset Corp. v. Superior Court*, *supra,* 51 Cal.4th at p. 322.)

6. *The First Amended Complaint Did Not Allege Facts Sufficient To Support Cancellation*

Shetty sought to cancel the deed of trust, promissory note, substitution of trustee, assignments of deed of trust, notice of default, notice of trustee sale and trustee's deed upon sale pursuant to Civil Code section 3412, which provides a "written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury

to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled."[10] Thus, to obtain cancellation under this section, a plaintiff must allege the instrument is "void or voidable" and would cause "serious injury" if not canceled. (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 818-819.) Further, a plaintiff must allege specific facts, "not mere conclusions, showing the apparent validity of the instrument designated, and point out the reason for asserting that it is actually invalid." (*Ephraim v. Metropolitan Trust Co.* (1946) 28 Cal.2d 824, 833-834; accord, *Wolfe v. Lipsy* (1985) 163 Cal.App.3d 633, 638 ["[t]o state a cause of action to remove a cloud [under Civil Code section 3412], instead of pleading in general terms that the defendant claims an adverse interest, the plaintiff must allege, inter alia, facts showing actual invalidity of the apparently valid instrument or piece of evidence"], disapproved on other grounds, *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 35-36.)

As to the deed of trust, the promissory note and the substitution of trustee, Shetty's claim for cancellation is barred by the statute of limitations. "Actions for cancellation of an instrument are subject to the four-year limitations period in the catchall provision of [Code of Civil Procedure] section 343." (*Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 477, fn. 8;

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[10] The trial court understandably read the first amended complaint as seeking cancellation of only the promissory note and deed of trust, the two documents identified in paragraph 185 of the first amended complaint. While the pleading is inartfully worded, construing it liberally, it appears Shetty sought cancellation of all documents related to the loan.

accord, *Zakaessian v. Zakaessian* (1945) 70 Cal.App.2d 721, 725 ["[o]rdinarily a suit to set aside and cancel a void instrument is governed by section 343 of the Code of Civil Procedure"].)[11] The promissory note and deed of trust were executed in December 2007 and the substitution of trustee was recorded in January 2009. Accordingly, the four-year limitations period for a cancellation claim directed to those documents expired in December 2011 and January 2013, respectively. This action was not filed until December 2013.

With respect to the claim for cancellation of the assignments, Shetty failed to allege any "serious injury" if the documents were left outstanding. Those assignments evidenced a transfer of the lender's interest as beneficiary in the deed of trust. Even if void or voidable, as Shetty alleged, the deed of trust has been extinguished by the foreclosure sale. Thus, the assignments have no remaining legal significance, and their cancellation would not have any effect on Shetty's claim to title of the property. (See *Saterbak v. JPMorgan Chase Bank, N.A.*, *supra*, 245 Cal.App.4th at p. 819 [holding plaintiff failed to allege "serious injury" warranting cancellation of assignment of deed of trust because transfer of beneficial interest had no effect on plaintiff's obligations].)

Finally, as to the notice of default, notice of trustee's sale and trustee's deed upon sale, Shetty again has failed to state a cause of action for cancellation. To the extent the conclusory allegations in his first amended complaint can be interpreted to even refer to these documents, Shetty alleged only that they are

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[11] Code of Civil Procedure section 343 provides, "An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued."

void because the underlying note and deed of trust were fraudulently created and the subsequent transfers were effected by unauthorized assignees. As discussed, however, Shetty's allegations of fraud lack the requisite specificity, and his allegations concerning the unlawful nature of the various assignments are contradicted by information contained in the exhibits attached to his pleading. Moreover, although it was Shetty's burden to affirmatively demonstrate the demurrer was sustained in error (see *Crawley v. Alameda County Waste Management Authority* (2015) 243 Cal.App.4th 396, 404; *Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 913), his briefs on appeal do little more than restate the allegations of his first amended complaint. Absent case law supporting his novel legal theory or more specific allegations of misconduct regarding the preparation of these documents, the trial court's ruling on the cancellation claim must be affirmed.

7. *The First Amended Complaint Did Not Allege Facts Sufficient To State a Claim for Declaratory Relief Against Ocwen*[12]

Declaratory relief is available to "[a]ny person interested under a written instrument . . . who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property . . . in cases of actual controversy relating to the legal rights and duties of the respective parties . . . ." (Code Civ. Proc., § 1060; see *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 728 ["[a] complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an

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[12] The declaratory judgment claim was not alleged against Wells Fargo and Litton.

actual controversy relating to the legal rights and duties of the respective parties under a written instrument and requests that these rights and duties be adjudged by the court"]; *Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 615.)[13]

Shetty has failed to allege an actual controversy relating to Ocwen. The first amended complaint alleged an actual controversy exists "as to the respective rights of the parties to this matter, including ownership of the property." To resolve this alleged controversy, the first amended complaint sought a declaration none of the defendants had any rights or interest in the property, Heydarzadeh's note or the deed of trust and had no right to collect payments or enforce the note or deed of trust. However, the first amended complaint did not allege Ocwen ever claimed an ownership interest in the property, asserted any rights under the note or deed of trust or sought to collect against those instruments. The only allegations involving Ocwen relate to its recording of allegedly false or fraudulent documents. Accordingly, Shetty is not entitled to pursue his claim for declaratory relief against Ocwen. (Cf. *Oppenheimer v. General Cable Corp.* (1956) 143 Cal.App.2d 293, 297 [upholding dismissal of certain defendants where "[a]s between plaintiff and these defendants, no dispute as to their legal rights and duties is shown"].)

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[13] The first amended complaint cited federal declaratory relief statutes as the basis for this claim. Those statutes apply only to federal courts. We construe the first amended complaint as attempting to state a cause of action pursuant to California's declaratory relief statute, Code of Civil Procedure section 1060.

8. *The First Amended Complaint Did Not Allege Facts Sufficient To State a Claim for Civil Conspiracy*

Civil conspiracy is not an independent tort. (See *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 511.) "Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort." (*Id.* at p. 511.) "The essence of the claim is that it is merely a mechanism for imposing vicarious liability; it is not itself a substantive basis for liability. Each member of the conspiracy becomes liable for all acts done by others pursuant to the conspiracy, and for all damages caused thereby." (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 823; see *Applied Equipment Corp.,* at pp. 510-511 [conspiracy is "a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration"].)

Shetty did not specify in his first amended complaint the tort Wells Fargo, Litton and Ocwen conspired to commit. To the extent Shetty intended to allege conspiracy liability based on the wrongful acts discussed above, his attempt fails for the reasons explained. (See *Applied Equipment Corp. v. Litton Saudi Arabia Ltd., supra,* 7 Cal.4th at p. 511 [civil conspiracy "must be activated by the commission of an actual tort"].)

9. *The Trial Court Did Not Abuse Its Discretion in Denying Leave To Amend*

"'If we see a reasonable possibility that the plaintiff could cure the defect by amendment, then we conclude that the trial court abused its discretion in denying leave to amend. If we

determine otherwise, then we conclude it did not.' [Citation.] "'The burden of proving such reasonable possibility is squarely on the plaintiff.'" [Citation.] To satisfy this burden, "'a plaintiff 'must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading'" by clearly stating not only the legal basis for the amendment, but also the factual allegations to sufficiently state a cause of action." (*Graham v. Bank of America, N.A.*, *supra*, 226 Cal.App.4th at p. 618.)

Shetty has failed to explain how, if given the opportunity, he would amend his complaint to properly assert the claims discussed. Throughout his briefing in the trial court and on appeal, the only specific amendment Shetty stated he could make would be to include allegations regarding the effect of the property transfers made by Heydarzadeh between the time he executed the note and deed of trust and granted Shetty the quitclaim deed. (See fn. 5, above.) The inclusion of additional allegations on that point would not cure any of the defects in Shetty's claims. Accordingly, there is no basis to reverse the trial court's denial of leave to amend.

DISPOSITION

The judgments dismissing Wells Fargo, Litton and Ocwen are affirmed. Wells Fargo, Litton and Ocwen are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

KEENY, J.*

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