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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

FERNANDO W. CHONG, Plaintiff and Appellant, v. FIRST AMERICAN LOANSTAR TRUSTEE SERVICES, LLC, as Trustee, etc., et al., Defendants and Respondents.	B265161 (Los Angeles County Super. Ct. No. YC068102)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ramona G. See, Judge. Affirmed.

Law Office of Richard L. Antognini and Richard L. Antognini for Plaintiff and Appellant.

Severson & Werson, Jan T. Chilton and Kerry W. Franich for Defendant and Respondent U.S. Bank National Association.

Wright, Finlay & Zak, Jonathan D. Fink and Magdalena D. Kozinska for Defendant and Respondent First American Loanstar Trustee Services, LLC.

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Representing himself, plaintiff Fernando W. Chong filed this case to forestall the foreclosure sale of his property. In ruling on a series of demurrers, the trial court repeatedly warned him to join his wife as an indispensible party because she was a coborrower who signed the mortgage note and deed of trust. He failed to do so. For that and other reasons related to the merits of his claims, the trial court ultimately dismissed his claims with prejudice. Now represented by counsel on appeal, plaintiff concedes he should have joined his wife and requests yet another opportunity to do so. He does not explain why he failed to join her after multiple opportunities, and we see no reason to give him another chance. She was an indispensible party and his failure to join her in the lawsuit supported the court's judgment. We therefore affirm on this basis and need not address any of the parties' other arguments.

BACKGROUND

Given the narrowness of our decision, we only briefly recite the facts. Plaintiff obtained the mortgage at issue in 2004 from Wells Fargo Bank, N.A. (Wells Fargo); both he and his wife signed the deed of trust and the mortgage note. They defaulted in 2009, so a notice of default was recorded, defendant First American Loanstar Trustee Services, LLC (First American) was substituted as trustee, and a trustee's sale was scheduled for May 2010. No sale was conducted at that time. In August 2011, Wells Fargo assigned its interest to defendant U.S. Bank National Association (U.S. Bank), as trustee, successor in interest to Wachovia Bank, N.A. as trustee for the GSR Mortgage Loan Trust 2005-7F. In April 2012, a second notice of trustee's sale was recorded, which expired by operation of law. According to the parties, no trustee sale has been held.

Representing himself, plaintiff filed a verified complaint in November 2012, naming U.S. Bank and First American as defendants (defendants) and asserting 14 causes of action related to his foreclosure. The court sustained First American's demurrer to the complaint, finding that, among other grounds, plaintiff failed to join his wife as an indispensible party. In response, plaintiff filed his first amended complaint (FAC), again asserting 14 causes of action. He did not join his wife as a plaintiff. Defendants demurred. Among other arguments, First American again contended the entire complaint

should be dismissed because plaintiff failed to join his wife as an indispensible party. The court sustained the demurrers without leave to amend for some claims and with leave to amend others. It also dismissed the entire complaint with leave to amend because plaintiff failed to join his wife. While plaintiff had apparently filed a power of attorney, the court noted that document did not give plaintiff authority to engage in the practice of law by representing his wife in the action. Plaintiff filed his second amended complaint (SAC), reasserting the 14 causes of action from the FAC and adding eight more. Again, he did not join his wife as a plaintiff. Defendants again demurred and moved to strike the claims improperly alleged after the prior demurrer was sustained. First American again argued the SAC should be dismissed because plaintiff failed to join his wife. The court granted the motions to strike and sustained the demurrers without leave to amend. One independent ground was the failure of plaintiff to join his wife as a party. The court entered judgment for defendants, and plaintiff appealed.

DISCUSSION

We review the sustaining of a demurrer de novo. Assuming all facts properly pleaded or reasonably inferred from the pleaded facts are true, we must determine whether those facts state a claim under any legal theory. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) We review the denial of leave to amend for abuse of discretion, deciding whether there is a reasonable possibility any defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden to show a reasonable possibility of amendment rests with the appellant. (*Ibid.*)

Code of Civil Procedure section 389 states in relevant part: "(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of

incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

"(b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder." (Code Civ. Proc., § 389, subds. (a)-(b).)

"'"'The controlling test for determining whether a person is an indispensible party is, 'Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensible party. [Citation.]' [Citation.] More recently, the same rule is stated, 'A person is an indispensible party if his or her rights must necessarily be affected by the judgment.'"'" (*Majd v. Bank of America, N.A.* (2015) 243 Cal.App.4th 1293, 1309 (*Majd*).)

Plaintiff does not dispute his wife was an indispensible party in his action challenging the foreclosure of their mortgage. She was jointly liable for the loan, and without her named in the lawsuit, the trial court was unable to grant complete relief to plaintiff to stave off foreclosure. The outcome of the lawsuit also would undoubtedly affect her, but she would be unable to protect her interests or assert any claims or defenses. Defendants could also face multiple lawsuits and potentially conflicting rulings over the same foreclosure issues. The trial court was correct that plaintiff's filing of a power of attorney was insufficient to solve the joinder issue because he could not represent her as a nonattorney. (*Drake v. Superior Court* (1994) 21 Cal.App.4th 1826, 1832.)

Rather than defend the failure to join his wife, plaintiff requests another opportunity to amend his complaint to add her. He gives no reasons why we should provide this additional opportunity, nor does he address any of the statutory factors that might excuse her nonjoinder to allow him to proceed on his complaint without her. He cites only *Majd*, but in that case the defendants did not assert misjoinder of parties as a ground for their demurrer in the trial court or on appeal, so the court felt it only fair to grant the plaintiff leave to amend to add the indispensible party if warranted. (*Majd, supra*, 243 Cal.App.4th at p. 1309.) Here, defendants raised the joinder issue multiple times in the trial court and on appeal, and plaintiff has yet to explain why he did not add his wife after the trial court gave him repeated opportunities to do so. Leave to amend need not be granted when a plaintiff had multiple opportunities to correct errors in the complaint but repeatedly failed to do so, and no useful purpose would be served by allowing the plaintiff to once again amend the complaint. (*Oddone v. Superior Court* (2009) 179 Cal.App.4th 813, 823 [“‘A general demurrer may be sustained without leave to amend where it is probable from the nature of the defects and previous unsuccessful attempts to plead that the plaintiff cannot state a cause of action.’”].) In the absence of any explanation whatsoever as to why plaintiff repeatedly failed to join his wife, the trial court did not abuse its discretion in denying plaintiff leave to amend.

Because the joinder issue is dispositive of plaintiff’s entire case, we need not address the parties’ additional arguments.

DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J. GRIMES, J.