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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ROBERT O. WHITFIELD, III,

Plaintiff and Appellant,

v.

SETERUS, INC., et al.,

Defendants and Respondents.

B272030

(Los Angeles County  
Super. Ct. No. BC576897)

APPEAL from the judgment of the Superior Court of Los Angeles County. Stephanie Bowick, Judge. Affirmed.

Robert O. Whitfield, III, in pro. per., for Plaintiff and Appellant.

Wright, Finlay & Zak, Jonathan D. Fink, Joan C. Spaeder-Younkin and Magdalena D. Kozinska for Defendants and Respondents.

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Plaintiff Robert O. Whitfield, III, and Ernestine Anderson (who is not a party to this appeal) filed this postforeclosure case against defendants Seterus, Inc., and Federal National Mortgage Association, alleging causes of action for fraud, declaratory relief, wrongful foreclosure, and quiet title, arising from the foreclosure of Ms. Anderson's home. Plaintiff was not a borrower on the loan that went into default, and he had no security interest in Ms. Anderson's home.

The trial court sustained defendants' demurrer without leave to amend, finding plaintiff lacked standing to challenge defendants' authority to foreclose, and that he failed to allege tender of payment of the obligation in full. We affirm, finding that the appellate record is inadequate to facilitate review, and plaintiff has failed to demonstrate that the operative complaint states viable claims.

### **BACKGROUND**

We start by discussing what is missing from the record on appeal. Plaintiff's notice designating the record on appeal did not designate the operative complaint, defendants' demurrer, defendants' request for judicial notice, plaintiff's opposition to the demurrer, or defendants' reply brief. Plaintiff and defendants filed motions to augment the record on appeal, which we granted.

However, still missing from the record are plaintiff's opposition to the demurrer, defendants' reply, as well as most of the exhibits which were appended to the operative complaint. Notably absent from the record are the exhibits supporting plaintiff's various theories of wrongdoing, such as "robo signing."

The following facts are taken from the first amended complaint and defendants' request for judicial notice. In 2006, Ms. Anderson obtained a loan of \$240,000 from JPMorgan Chase Bank, N.A., and executed a deed of trust securing the loan against her home in Los Angeles. In 2010, the deed of trust was assigned to

Mortgage Electronic Registration Systems, Inc. (MERS). In 2012, an assignment from MERS to Federal National Mortgage Association was recorded. Plaintiff alleges that “robo signers” executed the assignments and there was notary fraud in authenticating their signatures. The first amended complaint makes reference to numerous exhibits supporting these allegations, including copies of “variant signatures,” and deposition testimony from bank officers attesting to mass document fraud. These exhibits were not included in the record on appeal.

In 2012, plaintiff contacted Seterus, the loan servicer. Plaintiff alleged that Seterus misrepresented to *plaintiff* (who was not a party to the loan or deed of trust), that Ms. Anderson’s loan was assumable. Plaintiff allegedly relied on this representation by arranging for his parents (who were not parties to the underlying lawsuit) to purchase from Ms. Anderson her “rights, title, and interest” in her home loan for \$6,000. But Seterus later refused to give plaintiff’s parents a loan assumption application, informing them that the loan was not assumable. Plaintiff’s parents later transferred their rights, title and interest to plaintiff via grant deed on January 23, 2014.

Ms. Anderson fell behind in her payments, and on March 20, 2014, a notice of default was recorded. Eventually, after a trustee’s sale, a trustee’s deed upon sale was recorded on February 27, 2015, vesting title to the property in Federal National Mortgage Association based on its credit bid of \$252,373.82.

Defendants demurred to the first amended complaint, arguing that plaintiff and Ms. Anderson failed to allege tender; that plaintiff lacked standing to make a claim for misrepresentation, as he was not a party to any agreement to assume the home loan; the first amended complaint failed to allege plaintiff’s parents were

qualified to assume the loan; and any reliance on the alleged misrepresentation was unreasonable.

The trial court sustained the demurrer without leave to amend. This timely appeal followed.<sup>1</sup>

### DISCUSSION

Because our review of the trial court's ruling on a demurrer is de novo, it is essential that the record on appeal include all documents necessary to consider defendants' demurrer. (See, e.g., *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also Cal. Rules of Court, rules 8.122(b)(3), 8.124(b)(1)(B).) Here, the record does not include the majority of the exhibits to the first amended complaint, plaintiff's opposition, or defendant's reply. It was plaintiff's duty to "present a complete record for appellate review . . ." (*Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039; see also *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187.) "[I]f the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed." (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9.)

Even if we were to deem the record adequate, plaintiff has not satisfied his burden to demonstrate error. Plaintiff argues he has standing to assert a misrepresentation claim, and that he was not required to allege tender to void the trustee's sale. He does not otherwise address the adequacy of the first amended complaint, such as whether it includes sufficient facts to state claims for

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<sup>1</sup> Plaintiff and Ms. Anderson filed a notice of appeal. However, the only party to the appeal is Mr. Whitfield, as Ms. Anderson never filed a brief on appeal. Therefore, we do not discuss any issues related to the sustaining of the demurrer to Ms. Anderson's claims.

misrepresentation, declaratory relief, wrongful foreclosure, or quiet title. “Because a demurrer tests the legal sufficiency of a complaint, plaintiffs must show the complaint alleges facts sufficient to establish every element of each cause of action.” (*Kamen v. Lindly* (2001) 94 Cal.App.4th 197, 201; see also *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 [“Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived.”].) Plaintiff has failed to carry this burden here.

As to the only two issues plaintiff did address with this appeal, he has failed to demonstrate error. First, plaintiff argues he has standing to assert a misrepresentation claim, based on allegations that Seterus misrepresented to him that Ms. Anderson’s loan could be assumed by a qualified buyer. The complaint alleged the misrepresentation prevented him “from acting by taking other means to purchase the subject property . . . .” On appeal, plaintiff argues he was injured because he invested time finding investors to assume the loan.

But plaintiff’s allegations demonstrate he had no interest in the loan or deed of trust, and that he was acting as Ms. Anderson’s agent when he discussed assumption of the loan with Seterus. (See, e.g., *Robinson v. Travelers Indem. Co.* (1963) 219 Cal.App.2d 617, 622-623 [“Ordinarily an agent who makes a contract on behalf of a principal cannot maintain an action thereon in his own name on behalf of the principal although authorized by the principal to bring suit, unless the agent is a promise[e] or transferee.”].) Therefore, he lacks standing to make this claim.

On a related point, since plaintiff had no contract or other transaction pending with Seterus, plaintiff cannot allege reasonable reliance on any representation Seterus made to plaintiff, because plaintiff had no legal rights that could be affected by Seterus’s

statements to plaintiff. (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1239 [“Reliance exists when the misrepresentation or nondisclosure was an immediate cause of the plaintiff’s conduct which altered his or her legal relations, and when without such misrepresentation or nondisclosure he or she would not, in all reasonable probability, have entered into the contract or other transaction.”].)

Although plaintiff alleged the misrepresentation prevented him from pursuing other means to purchase Ms. Anderson’s property, plaintiff did not allege in the complaint or tell us in his brief on appeal exactly what other action he might have taken to defeat the secured interest of Federal National Mortgage Association or to otherwise prevent foreclosure.

Plaintiff suggests that he should be granted leave to amend to “clarify his standing” or to add his parents as parties. “The plaintiff bears the burden of proving there is a reasonable possibility of amendment. . . . [¶] To satisfy that burden on appeal, a plaintiff ‘must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.’ . . . The plaintiff must clearly and specifically set forth the ‘applicable substantive law’ [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action.” (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43-44, citations omitted.)

Here, plaintiff has not set forth what additional facts support his standing to maintain this action. Assuming for the sake of argument that plaintiff’s parents have standing to assert some claim against these defendants that is not barred by the statute of

limitations, adding new parties with independent rights would not save plaintiff's claims.

The only other claim of error plaintiff asserts in this appeal is that he was not required to allege tender to challenge the foreclosure because the foreclosure sale was void. (See *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 112.) Putting aside for the moment the fact that plaintiff is not a party to the loan and had no perfected rights in the property, plaintiff has not articulated how the alleged robo signing rendered the trustee's sale void. It is well settled that allegations of robo signing at most support a finding that the sale is *voidable* rather than void. (*Mendoza v. JPMorgan Chase Bank N.A.* (2016) 6 Cal.App.5th 802, 819-820.) The first amended complaint is replete with allegations about widespread robo signing across the country and in this case, but plaintiff does not make any reference in his brief to any allegations in the complaint, nor offer any explanation in his brief, explaining why the facts he alleged demonstrate this nonjudicial foreclosure sale was void.

### **DISPOSITION**

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

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

ROGAN, J.\*

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