

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LISA LU,

Plaintiff and Appellant,

v.

SELECT PORTFOLIO SERVICING,
INC., et al.,

Defendants and Respondents.

B252428

(Los Angeles County
Super. Ct. No. BC503520)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Elizabeth Allen White, Judge. Affirmed.

Lisa Lu, in pro. per., for Plaintiff and Appellant.

Locke Lord, Conrad V. Sison and Daniel A. Solitro for Defendant and Respondent
Select Portfolio Servicing, Inc.

Reed Smith, David S. Reidy, Matthew J. Brady and Michael Gerst for Defendant
and Respondent Bank of America, N.A.

Plaintiff, Lisa Lu, in propria persona, appeals from a judgment entered in favor of defendants, Select Portfolio Servicing, Inc. (Select), and Bank of America, N.A. (Bank of America), on her first amended complaint in which she sought to cancel a trustee sale of real property and quiet title, and asserted an unfair competition claim. The trial court sustained Select's and Bank of America's demurrers without leave to amend. The only issue plaintiff has asserted on appeal is that the trial court should have granted leave to amend. Plaintiff does not otherwise attack the substance of the trial court's rulings.

Plaintiff also argues that the trial court's refusal to grant leave to amend was "pre-textual" because of "the Court's view that [plaintiff] could never prevail unless she had the benefit of a seasoned legal practitioner." Because plaintiff has not indicated how she would cure the defects in her pleading if leave were granted, and because the record does not demonstrate any such pretext, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff alleged that on October 31, 2005, Sen Ho Chu (Chu) acquired the real property that is the subject of the action before us.¹ In connection with the acquisition of the property, Chu executed a promissory note secured by a deed of trust in favor of Novelle Financial Services. Plaintiff further alleged that although title was in Chu's name, she was the true owner because she paid all the expenses, including the mortgage, taxes, and insurance.² On December 15, 2008, Chu quitclaimed the property to plaintiff; the quitclaim deed was recorded. Plaintiff alleged that at all times Select held the first deed of trust on the property.

¹ Chu is not a party to this action.

² Copies of checks purportedly evidencing these payments were attached as exhibits to the first amended complaint. Plaintiff asks us to take judicial notice of these checks for the purpose of showing that she made payments to avoid foreclosure. We note that the checks are already part of our record.

Plaintiff further alleged that on March 13, 2009, a substitution of trustee was filed and recorded, naming Bank of America as trustee.³ In May 2009, Quality Loan Service Corporation substituted in as trustee. On March 29, 2011, a notice of trustee's sale was recorded. Plaintiff further avers that on September 30, 2011, the property was foreclosed on, with Quality Loan acting as the foreclosure trustee.

Plaintiff then filed this action. After the court sustained demurrers to her original complaint with leave to amend, plaintiff filed her first amended complaint.⁴ The gist of the causes of action for cancellation, quiet title, and Business and Professions Code section 17200 is that (1) defendants falsely inflated Chu's assets and the appraisal when Chu obtained his loan thus making default inevitable; (2) defendants failed to give proper foreclosure notice and to meet with her as the borrower to evaluate her financial condition as required by Civil Code⁵ section 2923.5, rendering the foreclosure sale invalid; (3) defendants prevented her from tendering the delinquent payments because of the latter statutory violations, a tender she was willing to make "subject to equitable adjustment for the damages caused . . . by [defendants'] activities"; and (4) defendants did not receive a valid assignment of the debt because the assignment was "robo-stamp[ed]."

³ The sequence of events involving Bank of America is not entirely clear. In her brief, but not in the first amended complaint, plaintiff represented that on April 29, 2009, Novelle Financial Services assigned its "beneficial interests" in the deed of trust to LaSalle Bank National Association as trustee on behalf of a trust. She further represented that Bank of America was successor in interest by merger to LaSalle.

⁴ Plaintiff also sued Kevin R. Taylor, Steve Goldman, Chris Krisha, K. N. Kathi, and Wealth Management for violation of Business and Professions Code section 17200 and for fraud in allegedly falsely charging her \$30,000 upon the representation that they could save her home from foreclosure. These defendants and her claims against them are not part of this appeal.

⁵ Undesignated statutory references are to the Civil Code.

On August 30, 2013, Select and Bank of America demurred to the claims against them in the first amended complaint.⁶ On October 31, 2012, the trial court sustained Select's and Bank of America's respective demurrers without leave to amend, although the trial court overruled some of Bank of America's grounds for its demurrer.⁷

With respect to the cause of action for cancellation of the trustee's deed, the trial court concluded: (1) the foreclosing trustee did not need to possess the promissory note to foreclose on the property; (2) the foreclosure proceedings were caused by plaintiff's defaulting on the loan and not any irregularity in the foreclosure proceedings; (3) section 2923.5 did not provide a basis for canceling the trustee's sale once the foreclosure sale had already occurred; (4) section 2923.6 did not require lenders to agree to a loan modification and certain 2012 amendments to the statute were not retroactive; (5) plaintiff did not allege that she assumed the obligations owed by Chu under the loan; (6) plaintiff did not allege a present tender of the total amount of the secured indebtedness; and (7) plaintiff's robo-stamping allegations were not supported by any factual allegations.

The trial court concluded the cause of action for violation of Business and Professions Code section 17200 was deficient because it was predicated on violations of Civil Code sections 2923.5 and 2923.6, which violations were insufficiently pleaded for the reasons set forth in the preceding paragraph. In addition, the plaintiff lacked standing because she was injured not by any violation of section 2923.5, but instead by her default on the loan, which default predated the alleged statutory violation.

The trial court sustained the demurrer as to plaintiff's quiet title cause of action because plaintiff failed to allege tender of the debt. As to Select, the claim was also

⁶ Because the record on appeal did not contain Select's demurrer to the first amended complaint, we take judicial notice of the superior court file. (Evid. Code § 452, subd. (d)(1); *Smith v. Premier Alliance Ins. Co.* (1995) 41 Cal.App.4th 691, 694 fn. 1.)

⁷ The trial court overruled Bank of America's demurrer for uncertainty, lack of standing, and failure to name Chu as a necessary party. The trial court also denied without prejudice what appears to have been Bank of America's request to expunge the *lis pendens* for lack of a properly noticed motion.

deficient because the property was sold to Bank of America and there was no allegation that Select was claiming an adverse interest in the property. The trial court entered judgment dismissing Select and Bank of America from the action, and plaintiff filed this appeal, albeit before judgment was actually entered below.⁸

DISCUSSION

Plaintiff does not contest the substance of the trial court's reasoning, but only that she should have been given leave to amend the first amended complaint. We review the trial court's decision not granting leave to amend for abuse of discretion. "If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment."

(*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

We acknowledge the general case law on which plaintiff relies in favor of a liberal approach to granting leave to amend pleadings. Plaintiff still has the burden of demonstrating how she would cure the defects in her first amended complaint if leave were granted. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 520, fn. 16.) Plaintiff has the burden of identifying "some legal theory or state of facts [plaintiff] wish[es]" to add by way of amendment that would change the legal effect of [plaintiff's] pleading. [Citation.]" (*Ibid.*)

Plaintiff has made no proffer of how she would amend to address the defects identified by the trial court. Plaintiff has merely "assert[ed] 'an abstract right to amend.' [Citation.]" (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1504.) She must "'clearly and specifically' set forth the legal authority for the claims [she contends she] can allege, the elements of each of those claims, and the specific factual allegations that would establish each of those elements. [Citation.]" (*Ibid.*) Nor is it our function to discern arguments or search the record for her. (Cal. Rules of Court,

⁸ We deem the premature notice of appeal to be a timely appeal from the judgment. (Cal. Rules of Court, rule 8.104(d).)

rule 8.204(a)(1)(B); *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368; *Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007.)

Plaintiff claims that the trial court penalized her for not having a lawyer when it did not allow her to amend. “Under the law, a party may choose to act as his or her own attorney. [Citations.] ‘[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]’ [Citation.]” (*Nwoso v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.) A self-represented litigant is “held to the same restrictive procedural rules as an attorney.” (*Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193.)

There is nothing in the record to support plaintiff’s contention that the trial court refused to allow further amendment because plaintiff was self-represented. Plaintiff’s argument to the contrary is mere conjecture.⁹ The record does not reflect that the trial court was less than even-handed with plaintiff. For the aforementioned reasons, plaintiff has failed to demonstrate that the trial court abused its discretion in denying leave to amend the first amended complaint.

⁹ In fact, the trial court gave plaintiff leave to amend when it sustained defendants’ demurrers to the original complaint. The trial court also overruled many of Bank of America’s grounds for demurrer to the first amended complaint and refused to expunge the lis pendens for lack of a noticed motion.

DISPOSITION

The judgment is affirmed. Defendants, Select Portfolio Servicing, Inc., and Bank of America, N.A., are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.