

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 TWO

ROBERT NORRIE,

Plaintiff and Appellant,

v.

CAPITAL ONE, N.A.,

Defendant and Respondent.

B282153

(Los Angeles County  
Super. Ct. No. BC532135)

APPEAL from a judgment of the Superior Court of Los Angeles County. Malcolm H. Mackey, Judge. Affirmed.

Robert Norrie, in pro. per., for Plaintiff and Appellant.

Severson & Werson, Jan T. Chilton and Kerry W. Franich  
for Defendant and Respondent.

\* \* \* \* \*

Robert Norrie (plaintiff) sued Capital One, N.A. (Capital One) and others, challenging their 2012 foreclosure and sale of his Manhattan Beach property. The trial court sustained a demurrer to plaintiff's second amended complaint without leave to amend. He appeals. Because plaintiff's pending bankruptcy deprives him of standing to prosecute his claims, we affirm.

### **FACTS AND PROCEDURAL BACKGROUND**

Because the clerk's transcript in this case contains only snippets of the record below, we have reconstructed what happened below by ordering up and reviewing the trial court's entire file.

#### **I. Facts**

##### **A. *Initial Loan***

In 2007, plaintiff borrowed \$1.5 million from ING Bank, F.S.B. (ING). The loan was secured by a deed of trust on property located on 33rd Street in Manhattan Beach (the property).

##### **B. *Foreclosure***

In February 2012, ING—through a newly substituted trustee—recorded a Notice of Default because plaintiff was \$258,533.67 behind in his loan payments.<sup>1</sup> Through its trustee, ING subsequently recorded a Notice of Trustee's Sale. A few months later, ING purchased the property at the foreclosure sale, and in September 2012 recorded a Trustee's Deed Upon Sale.

---

<sup>1</sup> ING initially filed a Notice of Default in February 2010, but rescinded it in July 2011 as part of a settlement agreement with plaintiff, who had sued ING for wrongful foreclosure and other claims. The settlement agreement required plaintiff to become current with his loan obligations within six months of the settlement; when plaintiff did not, ING filed the February 2012 Notice of Default.

### **C.     *Bankruptcy***

On June 17, 2013, plaintiff filed a petition in the bankruptcy court seeking relief under chapter 7 of the Bankruptcy Code. In February 2015, the bankruptcy court (1) issued an order finding plaintiff in contempt due to his “bad faith” refusal to obey several of its orders, and (2) issued an arrest warrant authorizing his detention “until such time as he purges his contempt.” The warrant is still outstanding, and the bankruptcy petition is still pending.

## **II.    *Procedural Background***

### **A.     *The Complaints***

In January 2014, plaintiff sued Capital One and others. ING had merged with Capital One in late 2012, and Capital One was the surviving entity.

After the trial court sustained demurrers to plaintiff’s original complaint and a first amended complaint with leave to amend, plaintiff in November 2016, filed the operative second amended complaint (SAC). The SAC alleged seven claims: (1) wrongful foreclosure; (2) quiet title; (3) breach of contract; (4) intentional misrepresentation; (5) negligence; (6) declaratory relief; and (7) violation of the unfair competition law. All of these claims were grounded in plaintiff’s allegations that various ING employees, in the summer of 2012, had reneged on an agreement that would have allowed plaintiff to reinstate his loan.

### **B.     *The Demurrer to the SAC***

Capital One demurred on several grounds, including that plaintiff lacked standing to pursue his claims because only the bankruptcy trustee could pursue claims involving the property, which was part of the bankruptcy estate.

Plaintiff filed a five-page opposition to the demurrer that contained no citation to any documents in the record or to any case law.

In February 2017, the trial court sustained the demurrer without leave to amend. The court found that plaintiff had waived his right to oppose the demurrer by filing a “cursory opposition without supportive cites.”

### **C. *Judgment and Appeal***

The court then entered judgment for Capital One, and subsequently dismissed the remaining defendants due to plaintiff’s failure to serve them.

Plaintiff filed a timely appeal.

## **DISCUSSION**

Plaintiff argues that the trial court erred in sustaining Capital One’s demurrer without leave to amend.

In reviewing this argument, we ask two questions: (1) was the demurrer properly sustained?; and (2) was leave to amend properly denied? “The first question requires us to “‘determine whether the complaint states facts sufficient to constitute a cause of action.’”” (*Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1335, quoting *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010.) In so doing, we independently “‘examine the complaint . . . to determine whether it alleges facts sufficient to state a cause of action.’” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1230.) Because “[s]tanding is the threshold element required to state a cause of action, . . . lack of standing may be raised by demurrer.” (*Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031.) “The second question ‘requires us to decide whether “‘there is a reasonable possibility that the defect [in the

operative complaint] can be cured by amendment.”””” (Schep, at p. 1335, quoting *McClain v. Sav-On Drugs* (2017) 9 Cal.App.5th 684, 695, review granted June 14, 2017, S241471.)

**I. Was the Demurrer Properly Sustained?**

When a person declares bankruptcy under chapter 7 of the Bankruptcy Code, any “pre-petition cause of action [becomes] the property of the Chapter 7 bankruptcy estate, and only the trustee in bankruptcy has standing to pursue it.” (*M & M Foods, Inc. v. Pacific American Fish Co., Inc.* (2011) 196 Cal.App.4th 554, 562, quoting *Parker v. Wendy’s Internat., Inc.* (11th Cir. 2004) 365 F.3d 1268, 1272, italics omitted.) The flipside of this rule is that the “chapter 7 debtor may *not* prosecute on his or her own a cause of action” because it “belong[s] to the bankruptcy estate.” (*Bostanian v. Liberty Savings Bank* (1997) 52 Cal.App.4th 1075, 1081, italics added.) The only exception is if “the claim has been abandoned by the trustee.” (*Ibid.*; see also *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 1003 [enumerating three ways the trustee may “abandon” a claim].)

Under this law, plaintiff does not have standing to pursue the claims alleged in the SAC. All of those claims arise from ING’s alleged conduct in the summer of 2012, so they are “pre-petition cause[s] of action.” What is more, plaintiff has not alleged nor does the bankruptcy court’s docket reflect that the bankruptcy trustee has abandoned these claims. Consequently, plaintiff’s claims belong to the trustee, not to plaintiff.

Plaintiff’s sole response is that he would ask the bankruptcy court to order the bankruptcy trustee to abandon his claims, except that the outstanding arrest warrant from that court makes such a request impossible. We reject this argument. First, we evaluate the sufficiency of plaintiff’s complaint at this

moment in time; whether or not plaintiff may acquire standing at some time in the future is of no moment. Second, and more importantly, plaintiff seeks to benefit from his own contemptuous conduct by asking us to excuse him from the usual rules of standing due to the outstanding arrest warrant against him. This is contrary to long-standing law. (See *MacPherson v. MacPherson* (1939) 13 Cal.2d 271, 277 [“A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state.”].)

Because a single basis for affirming a demurrer is sufficient—even if it is one not cited by the trial court—we need not consider plaintiff’s other arguments. (*Webb v. Youmans* (1967) 248 Cal.App.2d 851, 855 [single basis sufficient]; *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 111 [ground not cited by trial court permissible].)

## **II. Is There a Reasonable Possibility of Amendment?**

Because no amendment to plaintiff’s pleading can cure his lack of standing, the trial court correctly sustained the demurrer without leave to amend.

**DISPOSITION**

The judgment is affirmed. Capital One is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
CHAVEZ