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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SALLI A. MCDONALD,

Plaintiff and Appellant,

v.

NORTHRIDGE NEUROLOGICAL
MEDICAL GROUP, INC., et al.,

Defendants and Respondents.

B234027

(Los Angeles County
Super. Ct. No. BC429879)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rex Heeseman, Judge. Affirmed.

Salli A. McDonald, in pro. per.; and Lisa M. Fletcher for Plaintiff and Appellant.

Turner Aubert & Friedman, Steven Morris and Jonathan M. Deer for Defendant and Respondent Northridge Neurological Medical Group, Inc.

Fidelity National Law Group and Teresa Y. Hillery for Defendant and Respondent Felicia E. Ferrell.

Plaintiff appeals judgment entered after defendants Northridge Neurological Medical Group, Inc., (Northridge) Lawrence S. Rabinoff, Reliable Trustee Services, Inc. (Reliable), Lynn Wolcott, ReMAX-100, Jesse Reyes and Felicia Ferrell successfully demurred to her third amended complaint based upon her claims Northridge wrongfully foreclosed its second trust deed on her property. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. Plaintiff's Original Complaint and First Amended Complaint

Plaintiff's complaint, filed January 15, 2010, stated claims against Northridge for quiet title, damages, breach of contract (oral, written and implied), and equitable relief from fraud. Plaintiff, appearing in pro per, alleged she was the trustee of the Salli A. McDonald Family Trust, which owned the property at 5166 Angeles Vista in Los Angeles, California.

Northridge held a second trust deed on the property, while Wachovia Bank, as successor to World Savings Bank, held the first trust deed in the amount of \$360,000. Northridge's interest only loan called for 239 payments of \$1,041.00 monthly, with a balloon payment of \$101,041.67. New Haven Financial, Inc. (New Haven) was the trustee under the Northridge deed of trust.¹

On June 8, 2008, Reliable, as "agent for trustee," caused a notice of default to be recorded against the property alleging the Northridge loan was in default in the amount of \$4,511.35. On September 21, 2008, plaintiff alleged she spoke with New Haven, and Northridge postponed the scheduled sale in order to begin negotiations to modify the terms of plaintiff's note.

However, plaintiff alleged that unknown to her and to Wachovia Bank, the property was sold at a trustee's sale on January 8, 2009 while plaintiff's negotiations were ongoing. Further, the foreclosure sale was conducted by a trustee who was not the

¹ New Haven currently is in chapter 11 proceedings in the United States Bankruptcy Court for the Central District of California. The parties have agreed that the appeal proceed without New Haven's participation.

original trustee under the deed of trust, and plaintiff alleged defendants had failed to make a good faith effort to avoid foreclosure. Plaintiff alleged defendants made false representations with respect to the modification of plaintiff's loan, and engaged in conduct that violated Civil Code section 2923.5, which governs notices of default. Subsequent to the trustee's sale, defendants obtained a writ of possession and evicted plaintiff from the property.

Attached to the complaint was an "Affidavit" in which plaintiff alleged ongoing negotiations to modify her loans during the period October to December 2008, after Northridge halted its trustee's sale. Plaintiff did not learn of the trustee's sale held in January 2009 until her tenant told her someone had come to the house representing himself as the new owner of the property.

Plaintiff's first amended complaint filed March 4, 2010 alleged substantially the same claims for relief.

2. Demurrer to First Amended Complaint

On May 11, 2010, defendants demurred to plaintiff's first amended complaint on the grounds a trustee could not appear in pro per; the exhibits attached to the complaint showed the original trustee conducted the sale;² the fraud claim was not pleaded with sufficient particularity; the quiet title claim was not labeled; the breach of contract claims failed to set forth the contract that was allegedly breached because plaintiff did not allege that defendants promised a repayment plan.

Plaintiff's opposition asserted that she pleaded declaratory relief because she could not satisfy the tender requirement because defendants' conduct associated with the foreclosure prevented her from doing so; her fraud claims were particular because she would not have entered into the loan because its onerous terms spoke for themselves and the detailed facts concerning defendants' fraud were exclusively within their knowledge; defendants violated Civil Code section 2934 because there cannot be two trustees with a power of sale at the same time; and she adequately alleged breach of contract.

² Reliable conducted the sale as "agent" of New Haven.

On August 5, 2010, the trial court sustained the demurrer with leave to amend, finding that no quiet title action was alleged; plaintiff had improperly brought the action on behalf of a trust in propria persona; plaintiff had failed to plead claims under Civil Code 2923.5 because the exhibits to the complaint established the original trustee conducted the sale; plaintiff's fraud claims were insufficiently particular because they did not allege how, when, where and by what means the alleged misrepresentations regarding the sale and loan modification were made; and plaintiff had failed to allege facts supporting any promise that was breached.

3. *Plaintiff's Second Amended Complaint*

On September 3, 2010, plaintiff filed a second amended complaint on behalf of herself individually in pro per that alleged claims for quiet title and declaratory relief;³ fraud and deceit, cancellation of trustee's deed upon sale; monies had and received, and conversion. The second amended complaint added new parties—New Haven, Lawrence S. Rabinoff (individually and as an officer of New Haven), Reliable, Lynn Wolcott (individually and as president of Reliable), Remax-100, and Jesse Reyes.

Plaintiff alleged that she “fell behind” in her payments in the amount of \$4,511.35, and that Northridge and its representative defendant New Haven recorded a notice of sale on June 8, 2008. Plaintiff made contact with Karen Larsons (Larsons) at New Haven in an effort to cure the delinquent amount. In September 2008, notwithstanding plaintiff's efforts to obtain a loan modification, Reliable recorded a notice of sale with a sale date of October 1, 2008. Plaintiff participated in a conference call with New Haven to verify that Wachovia Bank was modifying the senior loan. Nonetheless, plaintiff learned that in January 2009, without notice, the property was sold at a trustee's sale.

Plaintiff alleged that the trustee's sale was illegal and void because the trustee on the notice of sale was not properly substituted for the original trustee. Plaintiff further alleged she was in compliance with the loan agreement, and stood ready willing and able

³ On July 21, 2010, plaintiff as Trustee of the Salli A. McDonald Family Trust conveyed the property to plaintiff individually.

to tender the amount of the delinquency and cure the default but was prevented from doing so by defendant's conduct.

4. *Demurrer to Second Amended Complaint*

On October 20, 2010, defendants demurred to the second amended complaint on the grounds it constituted a sham pleading because it contradicted facts in plaintiff's prior complaints: Plaintiff had substituted herself individually as the owner of the property to avoid the prior court's ruling that she lacked capacity to sue because the trust could not represent itself; plaintiff added additional defendants, including a defendant, New Haven, that was in bankruptcy; the claim for quiet title was insufficient because the exhibits attached to complaint demonstrated the original trustee under the deed of trust recorded the notice of sale; the claim for fraud was not pleaded with sufficient particularity; the claims for cancellation of instrument, money had and received, and breach of contract were new causes of action added without permission of court; and the claim for breach of contract failed to allege whether the contract was oral or written.

Defendants simultaneously moved to expunge the lis pendens plaintiff had recorded on July 16, 2009.⁴

Plaintiff's opposition to the demurrer asserted that she had transferred the property out of the trust and to herself individually on July 21, 2010; her fraud claims had sufficient particularity given that most of the facts concerning defendant's allegedly fraudulent conduct were within defendant's knowledge; she was entitled to cancellation of the trustee's deed upon sale and for monies had and received because defendants wrongfully foreclosed; defendants wrongfully converted her personal property; Reliable was not properly substituted as trustee, thus rendering the sale in violation of Civil Code

⁴ We note that respondents have augmented the record to include their motion to expunge the lis pendens. We point out that on demurrer, to test the sufficiency of the complaint, we consider only the complaint and those matters that may be judicially noticed. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) In connection with the motion to expunge, respondents judicially noticed several documents, including the order granting the motion to expunge the lis pendens, the grant deed to Felicia Ferrell, the ultimate buyer of the property, and the trustee's deed of sale.

section 3934; and she had adequately alleged claims for breach of contract based upon her reliance on defendant's postponement of the original sale date and defendants' inquiry concerning what plaintiff would be able to pay. Further, she claimed she had requested relief from the automatic bankruptcy stay in New Haven's chapter 11 proceedings.

On November 19, 2010, the court sustained the demurrer, finding that although plaintiff had transferred the property to herself and out of the trust, the exhibits to the complaint established that the Trust was the owner of the property; and the third, fourth and fifth causes of action for cancellation of instrument, monies had and received, and conversion had been added without leave of court; the trustee properly employed Reliable as its agent to conduct the foreclosure sale; the claim for cancellation failed to allege a tender of the indebtedness; and plaintiff failed to state the fraud claims with particularity. The court also granted Northridge's motion to expunge the lis pendens.

5. Plaintiff's Third Amended Complaint

On January 19, 2011, plaintiff filed a third amended complaint that added Felicia Ferrell (the purchaser of the property from defendant in October 2010)⁵ and alleged claims for quiet title, declaratory relief, fraud and deceit, breach of contract, and conversion.⁶ Plaintiff alleged that sometime in 2008, plaintiff began to have difficulty making her payments on the Northridge loan, as well as on the \$360,000 first trust deed now held by Wachovia. In late September 2009, plaintiff contacted Wachovia (through its loan servicer New Haven and its representative EJ Chanin (Chanin)) and Northridge (through its representative Robert Cohenour (Cohenour)) to renegotiate her loan payments. Specifically, she contends that on September 21 and 29, 2008, Larsons, on behalf of New Haven, called Wachovia to verify that Wachovia was working with

⁵ The only allegation that names Ferrell states that she was a resident of Los Angeles County and acted in concert with the other defendants. Northridge's grant deed to Ferrell was dated October 1, 2010 and recorded December 13, 2010.

⁶ The copy of the third amended complaint in the record does not contain any exhibits.

plaintiff to modify the senior loan. This call was a three-way conference call with plaintiff and Cohenour.

On October 1, 2008, plaintiff alleged Cohenour stopped the trustee's sale to work with plaintiff on the loan payments. On October 7, 2008, plaintiff sought assistance of an entity known as "D Law Group, US Housing Assist" (Housing Assist) to negotiate the terms of both the Wachovia loan and the Northridge loan.

On December 4, 2008, Chanin of New Haven was assigned to plaintiff's file. Selena Evans of Housing Assist contacted Chanin. During the period October 2008 through March 2009, plaintiff alleged New Haven was in communication with Wachovia regarding modification of her loans. In late December, Evans asked Chanin what payments Northridge would accept, and suggested \$300.

On January 8, 2009, New Haven recorded a trustee's deed. On January 23, 2009, Cohenour began unlawful detainer proceedings. On January 27, 2009, Chanin told Evans that Northridge was trying to foreclose and assume the senior Wachovia loan.

During March 2009, Chanin indicated he would "call the legal department to inquire about the foreclosure that occurred during negotiations." Wachovia verified that plaintiff was eligible for its mortgage assistance program. As of March 30, 2009, Wachovia was unaware that Northridge had foreclosed its second trust deed. On March 31, 2009, Housing Assist spoke to Wachovia and informed it that they would no longer be able to assist plaintiff due to defendants' actions.

Plaintiff's third amended complaint further alleged that the notices of sale recorded on September 9, 2008 and September 19, 2008 violated Civil Code section 2923.5. In particular, she alleged that the notice of sale recorded September 9, 2008 did not contain the trustee's name, address and phone number, and the notice of sale affixed to the property contained a different sales location. Plaintiff alleged the second notice of sale dated September 18, 2008 did not provide the notice required by Civil Code section 2923.5. She further alleged defendants failed to make a good faith effort to explore all

options prior to foreclosure. Plaintiff yet again claimed Reliable failed to record a valid substitution of trustee.

Plaintiff alleged that Chanin, who had a duty to disclose, concealed the Northridge foreclosure from plaintiff, and failed to inform her that Cohenour was prosecuting an unlawful detainer action against her. Cohenour told plaintiff he would work with her, and instructed Reliable to postpone the October 1, 2008 sale, but denied speaking to plaintiff, and commenced an unlawful detainer action against her while Evans and Chanin were working out new terms for plaintiff's loan. Further, Cohenour collected rents from the property but did not apply them to the indebtedness, and Northridge did not assume or pay off the Wachovia loan. Plaintiff alleged that Rabinoff, acting on behalf of New Haven, during the negotiations to modify plaintiff's loan, recorded a trustee's deed upon sale without the knowledge of plaintiff, Wachovia, and Housing Assist.

6. *Defendants' Demurrer to Plaintiff's Third Amended Complaint*

On April 21, 2011, defendants demurred, contending that the third amended complaint was a sham because it contradicted a prior verified pleading and restated claims the court had ruled were insufficient on previous demurrers. In particular, defendants alleged that plaintiff purported to assign claims from the trust to herself in order to avoid the prohibition against a trust appearing without an attorney; plaintiff added additional defendants, including the purchaser of the property who bought after the lis pendens had been expunged; plaintiff's claim for quiet title failed because the property was sold to a bona fide purchaser after the lis pendens was expunged; her claim for fraud was not pleaded with sufficient particularity; her claim for breach of contract was uncertain; and her conversion claim failed because it was added without permission of court.

Plaintiff opposed, making the same arguments she made in connection with her two previous oppositions to defendants' demurrers, and where she alluded to numerous facts not alleged in her third amended complaint.

On April 29, 2011, the trial court sustained the demurrer without leave to amend, finding that plaintiff omitted from her third amended complaint the admission that she had defaulted on the loan, and in spite of the efforts to negotiate, there was no agreement alleged that Northridge would not proceed with the foreclosure sale. Further, plaintiff attempted to cure her pleading by adding facts and omitting those that were fatal to her claims, most notably by filing her complaint in pro. per. because the owner of the property was the Trust, and plaintiff's transfer of the property to herself individually was merely an attempt to evade the court's prior ruling on this issue. Further, plaintiff continued to attempt to add claims without seeking leave of court; she could not state a claim for quiet title because the property had been transferred to a bona fide purchaser; plaintiff failed to allege a valid tender; her fraud claims failed for lack of particularity; and because Reliable was not the trustee, it was not required to record a substitution.

DISCUSSION

Plaintiff contends the trial court erred in concluding that her third amended complaint was a sham pleading because she was able to explain the inconsistencies. She further contends the trial court erred because (1) she stated a claim for quiet title because defendants deeded the property to Ferrell, the buyer, while the lis pendens was recorded against the property; (2) her claim for fraud was sufficiently particular given that the facts are within defendants' knowledge; (3) she should be permitted to amend to base her breach of contract claim on defendants' violations of Civil Code section 2923.5; and (4) although she did not originally plead a claim for conversion, she should be allowed to amend to do so.

I. STANDARD OF REVIEW

On appeal from a judgment of dismissal following an order sustaining a demurrer, "we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory, such facts being assumed true for this purpose." (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) We assume the truth of the properly pleaded factual allegations, facts that can be reasonably inferred from those

pleaded, and facts of which judicial notice can be taken. (*Schifando v. City of Los Angeles*, *supra*, 31 Cal.4th at p. 1081.) We review the trial court’s denial of leave to amend for an abuse of discretion. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) “When a demurrer is sustained without leave to amend, we determine whether there is a reasonable probability that the defect can be cured by amendment. [Citation.]” (*V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 506.)

“Under the sham pleading doctrine, plaintiffs are precluded from amending complaints to omit harmful allegations, without explanation, from previous complaints to avoid attacks raised in demurrers or motions for summary judgment.

[Citations.] . . . ‘Allegations in the original pleading that rendered it vulnerable to demurrer or other attack cannot simply be omitted without explanation in the amended pleading. The policy against sham pleadings requires the pleader to *explain* satisfactorily any such omission.’ [Citation.] [¶] . . . The sham pleading doctrine is not “‘intended to prevent honest complainants from correcting erroneous allegations . . . or to prevent correction of ambiguous facts.’” [Citation.] Instead, it is intended to enable courts “‘to prevent an abuse of process.’” [Citation.]” (*Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 425–426, fn. omitted.)

Although when reviewing a judgment entered following the sustaining of a demurrer without leave to amend, we must assume the truth of the factual allegations of the complaint, “an exception exists where a party files an amended complaint and seeks to avoid the defects of a prior complaint either by omitting the facts that rendered the complaint defective or by pleading facts inconsistent with the allegations of prior pleadings.” In such circumstance, “the policy against sham pleading permits [us] to take judicial notice of the prior pleadings and requires that the pleader explain the inconsistency. If [she] fails to do so, we may disregard the inconsistent allegations and read into the amended complaint the allegations of the superseded complaint.” (*Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 383–384.)

II. PLAINTIFF FAILED TO CURE THE DEFECTS IN HER THIRD AMENDED COMPLAINT⁷

Substantively, plaintiff's claims arising from the foreclosure are based upon four asserted sets of facts: (1) Northridge failed to honor its agreement to hold the foreclosure in abeyance while plaintiff worked out a payment plan, (2) the foreclosure sale was not conducted properly because the trustee under the deed of trust did not conduct the sale, no substitution of trustee for the trustee conducting the sale was recorded, and the notices of sale were defective, (3) defendants fraudulently acted in concert to facilitate the illegal foreclosure sale, failed to disclose the terms of the loan, engaged in unfair lending practices, and engaged in fraudulent conduct while negotiating the modification of plaintiff's loan; and (4) Ferrell bought the property from Northridge although a lis pendens had been recorded.

1. Irregularities in Trustee's Sale

““[Civil Code] sections 2924 through 2924k provide a comprehensive framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust.”” (*California Golf, L.L.C. v. Cooper* (2008) 163 Cal.App.4th 1053, 1070.) The power of sale in a deed of trust allows a beneficiary recourse to the security without the necessity of a judicial action. (*Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1249–1250.) Absent any evidence to the contrary, a nonjudicial foreclosure sale is presumed to have been conducted regularly and fairly. (Civ. Code, § 2924.) However, irregularities in a nonjudicial trustee's sale may be grounds for setting it aside if they are prejudicial to the party challenging the sale. (*Lo v. Jensen* (2001) 88 Cal.App.4th 1093, 1097–1098.)

“The statutory scheme can be briefly summarized as follows. Upon default by the trustor, the beneficiary may declare a default and proceed with a nonjudicial foreclosure

⁷ Even assuming the trust's transfer of the property to plaintiff individually was valid, we find nonetheless find that her third amended complaint fails to state claims under the substantive law.

sale. [Citations.] The foreclosure process is commenced by the recording of a notice of default and election to sell by the trustee. [Citations.] After the notice of default is recorded, the trustee must wait three calendar months before proceeding with the sale. [Citations.] After the 3-month period has elapsed, a notice of sale must be published, posted and mailed 20 days before the sale and recorded 14 days before the sale. [Citations.] . . . The property must be sold at public auction to the highest bidder.” (*Moeller v. Lien* (1994) 25 Cal.App.4th 822, 830.)⁸

In order to challenge a trustee’s sale, “there must be evidence of a failure to comply with the procedural requirements for the foreclosure sale that caused prejudice to the person attacking the sale.” (*Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 700.) “‘It is the general rule that courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties.’ [Citation.]” (*Lo v. Jensen, supra*, 88 Cal.App.4th at pp. 1097–1098.)

“Our analysis proceeds on the presumption of validity accorded the foreclosure sale.” (*Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 444.) “‘If a trustee’s deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser.’” (*Id.* at p. 441.)

Where facts appearing in exhibits to the complaint contradict the allegations of the complaint, facts in the exhibit take precedence. (*Holland v. Morse Diesel Internat., Inc.*

⁸This comprehensive statutory scheme is designed to: ““(1) provide the creditor/beneficiary with a quick, inexpensive and efficient remedy against a defaulting debtor/trustor; (2) protect the debtor/trustor from wrongful loss of the property; and (3) ensure that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser.”” (California Golf, L.L.C. v. Cooper, supra, 163 Cal.App.4th at p. 1070.)

(2001) 86 Cal.App.4th 1443, 1447.) Here, the exhibits attached to the complaints filed herein establish that the trustee's sale was properly conducted.⁹ The notice of default and notices of sale were executed by Reliable as "agent" for the trustee New Haven under the deed of trust. Civil Code section 2924, subdivision (a)(1) provides authority for an agent of a trustee or beneficiary to cause a notice of default to be recorded, stating in relevant part: "The trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default." Section 2924, subdivision (a)(1) "does not include a requirement that an agent demonstrate authorization by its principal." (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 268.) As Reliable was acting as New Haven's agent, rather than as the trustee, plaintiff's assertion fails that a recordation of an assignment of the trustee was required.

Further, Civil Code section 2923.5 provides that a mortgagee, trustee, beneficiary, or authorized agent must contact the borrower "in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure" or satisfy due diligence requirements before a notice of default is filed. Section 2923.5 does not require the lender to modify the loan. (*Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 214.) The only remedy for noncompliance with the statute is the postponement of the foreclosure sale. (*Ibid.*)

Finally, as for the other alleged irregularities of the October 2008 notices of sale, to wit, that it contains different addresses for the sale and was not given within the required time period—these contentions lack merit. Both notices provide the sale would take place at the same address. The notice of sale must be given at least 20 days *before* the sales date. (Civ. Code, § 2924b; *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 91.)

⁹ Although the copy of the third amended complaint in the record lacks exhibits, the third amended complaint references the same notices of sale as the second amended complaint, the copy of which in the record does contain exhibits.

Thus, although we do not know why the second notice of sale was recorded less than two weeks before the sale date, because the sale took place in January 2009, both notices of sale were valid as being given 20 days before the trustee's sale. (*Knapp v. Doherty*, at pp. 92–93 [premature notice of sale does not invalidate sale].)

2. Breach of Contract

The elements of a breach of contract claim are (1) the existence and terms of the contract, (2) the plaintiff's performance or excuse for failing to perform, (3) the defendant's breach, and (4) plaintiff's damages. (*Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal.4th 228, 243; *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1031.)

Plaintiff's third amended complaint alleges some nebulous facts that she contends add up to an agreement by Northridge to hold its foreclosure in abeyance while she worked out a payment plan. Specifically, plaintiff alleges that she had several phone conversations with Larson and Chanin at New Haven and Cohenour at Northridge, and that they agreed to stop the trustee's sale; however, nothing further occurred until Northridge foreclosed. These facts do not establish an agreement because the terms of any purported agreement are uncertain. (*Cal. Lettuce Growers v. Union Sugar Co.* (1955) 45 Cal.2d 474, 481 [terms of contract must be sufficiently certain to provide a basis for awarding damages].) Key facts, such as the amount of time Northridge would forbear from holding the trustee's sale, or plaintiff's consideration for such forbearance, are omitted from plaintiff's third amended complaint. Without these facts, plaintiff's claims relying on such agreement as their basis—quiet title, declaratory relief, breach of contract, and conversion—necessarily fail.

3. Fraud

The elements of a cause of action for fraud by intentional misrepresentation are (1) a misrepresentation, (2) made with knowledge of its falsity (scienter), (3) intent to defraud or to induce reliance, (4) justifiable reliance, and (5) resulting damage. (*Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 363.) "In California, fraud

must be pled specifically; general and conclusory allegations do not suffice.” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) This requirements serves two purposes. First, it gives the defendant notice of the definite charges to be met. Second, the allegations “should be sufficiently specific that the court can weed out nonmeritorious actions on the basis of the pleadings. Thus the pleading should be sufficient ““to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.”” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216–217.) Thus, a plaintiff must plead facts which show how, when, where, to whom, and by what means the representations were made. (*Lazar v. Superior Court, supra*, 12 Cal.4th at p. 645.) When the defendant is a corporate defendant, the plaintiff must further ““allege the names of the persons who made the . . . representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.”” (*Ibid.*) There are certain exceptions to the particularity requirement. “Less specificity is required when ‘it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy.’” (*Committee on Children’s Television, Inc. v. General Foods Corp., supra*, 35 Cal.3d at p. 217.)

Here, plaintiff’s allegations—that defendants failed to comply with Civil Code section 2925.5, failed to advise her the property had been foreclosed upon, failed to negotiate a modification or postpone the sale—do not support a finding of fraud. Plaintiff at most alleges that she lacked knowledge of certain facts that she was on inquiry notice of and had a duty to discover. She fails to alleges specific instances of misrepresentation and that her reliance was reasonable. Plaintiff was in default on the Northridge loan; absent an express and definitive agreement with Northridge to halt the sale and give her a new payment plan, as well as work out her arrearages, she could not reasonably rely on nebulous phone conversations as signifying that no foreclosure would take place.

4. Quiet Title

Ordinarily, the elements of an action to quiet title are that: (1) “the plaintiff is the owner and in possession of the land” and (2) “the defendant claims an interest therein adverse to [the plaintiff]. [Citations.]” (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 740–741; *Lucas v. Sweet* (1956) 47 Cal.2d 20, 22.) Plaintiff’s third amended complaint sought a determination of the title of the subject property as of the trustee’s sale and “any other dates she may have been deprived of her proprietary interest” in the property. As plaintiff cannot establish Northridge wrongfully foreclosed, she has no claim for quiet title against it.

In addition, apparently, plaintiff contended that Ferrell could not acquire good title from Northridge because Ferrell acquired the property in October 2010, and the lis pendens was not expunged until November 2010. A lis pendens provides constructive notice of the litigation, such that any judgment later obtained in the action relates back to the filing of the lis pendens. (*Bishop Creek Lodge v. Scira* (1996) 46 Cal.App.4th 1721, 1733.) A lis pendens clouds title until the litigation is resolved or the lis pendens is expunged, and any party acquiring an interest in the property after the action is filed will be bound by the judgment. (*BGJ Associates v. Superior Court* (1999) 75 Cal.App.4th 952, 966–967.) Even after judgment, “a lis pendens remains effectively on the record unless a statutory ground for expungement is established.” (*Knapp Development & Design v. Pal-Mal Properties, Ltd.* (1987) 195 Cal.App.3d 786, 791.) Thus, although Ferrell acquired title to the property in October 2010 subject to the lis pendens, with the expungement of the lis pendens in November 2010, she became a bona fide purchaser and any quiet title claim against her fails. (See Code Civ. Proc., § 405.61; *Lewis v. Superior Court* (1994) 30 Cal.App.4th 1850, 1871–1872 [purchasers acquiring property after expungement of lis pendens bona fide purchasers]; *Moeller v. Lien, supra*, 25 Cal.App.4th at pp. 833–834 [trustee’s sale cannot be set aside against a bona fide purchaser].)

5. Conversion

Plaintiff attempted to add to her third amended complaint a new claim for conversion based upon the unlawful taking of her items from the property after the trustee's sale. Leave to amend a prior complaint does not permit the pleader to add new cause of action; rather, it only permits amendment of claims asserted in the prior complaint. (*People ex rel. Dept. Pub. Wks. v. Clausen* (1967) 248 Cal.App.2d 770, 785.)

In summary, plaintiff has been given three chances to amend her complaint, and after four attempts has been unable to state a claim based upon the alleged wrongful foreclosure of her property. The trial court did not abuse its discretion in denying leave to amend. (*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." (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 992, p. 403.)

DISPOSITION

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

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.