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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

SATISH SHETTY, Plaintiff and Appellant, v. KINECTA FEDERAL CREDIT UNION et al., Defendants and Respondents.	B266192 (Los Angeles County Super. Ct. No. LC101120)

APPEAL from a judgment of the Superior Court of Los Angeles County, Huey P. Cotton, Judge. Affirmed.

Satish Shetty, in pro. per., for Plaintiff and Appellant.

Anderson, McPharlin & Connors, Eric A. Schneider and Lisa Anne Coe, for Defendants and Respondents Kinecta Federal Credit Union and Mortgage Electronic Reistration Systems, Inc.

After Mathew Behrooz Chavol defaulted on a home loan secured by a deed of trust on his property and following a notice of foreclosure, his house was sold in a trustee's sale. Three weeks later, Chavol executed a grant deed and an assignment purporting to transfer the property to Satish Shetty and assigning Shetty all claims and causes of action relating to the note and deed of trust. Representing himself, Shetty sued the lender, the trustee and the assignee of the deed of trust. Shetty alleged the defendants had improperly transferred an interest in the deed of trust separately from any interest in the corresponding note and, therefore, were not entitled to foreclose. Shetty also contended the assignment of the interest in the deed of trust was false and fraudulent. The trial court sustained without leave to amend the demurrer of Kinecta Federal Credit Union (Kinecta) and Mortgage Electronic Registration Systems, Inc. (MERS), finding Shetty was without standing to pursue the claims and had failed to allege tender, and entered a judgment of dismissal. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Loan, Substitution of Trustee and Assignments*

On December 6, 2007 Chavol executed a promissory note and deed of trust encumbering real property located at 7612 Carmenita Lane, Canoga Park, to obtain a home loan in the principal amount of $1,000,000 from Kinecta. The deed of trust named Kinecta as the lender (that is, the beneficiary) and First American Title Insurance Company as the trustee and was recorded with the Los Angeles County Recorder's Office on December 20, 2007.

On January 20, 2009 Kinecta executed a Substitution of Trustee stating Assured Lender Services, Inc. (Assured) was the new trustee under the deed of trust.[1] The substitution of trustee was recorded with the County Recorder on June 2, 2009.

Shetty alleged at some point in 2010 Kinecta sold its interest in Chavol's promissory note to Dovenmuehle Mortgage, Inc.[2] On August 2, 2010 Kinecta executed a Corporate Assignment assigning its rights in the deed of trust to MERS. The assignment was recorded with the County Recorder on August 20, 2010.

On March 11, 2013 MERS executed an Assignment of Deed of Trust assigning all rights in the deed of trust back to Kinecta. The assignment was recorded with the County Recorder on March 22, 2013.

2. *The Trustee's Sale*

In July 2009 Kinecta, through its authorized agent Assured, initiated nonjudicial foreclosure proceedings pursuant to Civil Code section 2923.5 et seq. A notice of default and election to sell was issued and recorded in July 2009, followed by a notice of trustee's sale in July 2013. The property was sold on September 3, 2013 to Kinecta, the successful bidder at the trustee's sale. The trustee's deed upon sale was recorded on September 6, 2013.

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[1] The deed of trust authorized Kinecta, at its option and from time to time, to appoint a successor trustee.

[2] The deed of trust authorized Kinecta to sell the note or partial interest in the note, as well as the deed of trust, "one or more times without prior notice to Borrower."

3. *Chavol's Grant Deed and Assignment to Shetty*

On September 24, 2013 Chavol executed a grant deed purportedly transferring the property to Shetty. The next day Chavol executed an assignment stating "[a]ll beneficial interest in any and all claims and causes of action arising out of" the note and deed of trust were assigned to Shetty. Both documents were recorded on October 7, 2013.

4. *Shetty's Complaint*

On December 10, 2013 Shetty, representing himself, sued Kinecta, MERS and Assured in Los Angeles Superior Court.[3] On March 6, 2015 Shetty filed the operative first amended complaint alleging seven causes of action against various groupings of defendants: (1) negligence; (2) slander of title; (3) quiet title; (4) cancellation of written instruments; (5) unjust enrichment—restitution; (6) unfair business practices in violation of Business and Professions Code section 17200 et seq.; and (7) declaratory relief.[4] Shetty's claims were based on the theory Kinecta had no authority to foreclose because: (1) it no longer had any interest in the note, which previously had been sold to Dovenmuehle; and/or (2) the assignment from MERS to Kinecta was false or fabricated making it legally void. The first amended complaint attached as exhibits the recorded grant deed executed by Chavol, deed of

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[3] While Shetty filed the complaint, first amended complaint and opposition to demurrer as a self-represented litigant, the record reflects he was represented by an attorney in the trial court beginning July 13, 2015 and during oral argument on the demurrer.

[4] The cause of action for negligence was not alleged against Kinecta and MERS and is not at issue in this appeal.

trust, substitution of trustee, assignment to MERS, notice of default and trustee's deed upon sale.[5]

5. *The Demurrer*

Kinecta and MERS demurred to the causes of action directed to them, arguing, because the grant deed was executed after the foreclosure sale had taken place, Chavol did not convey title to Shetty and Shetty had no standing to bring any of the claims. They also argued Shetty failed to allege he made a credible tender of the full amount due under the note. Finally, they argued Shetty failed to allege facts sufficient to state a cause of action.

The trial court sustained the demurrer without leave to amend.[6] The court agreed Shetty had no interest in the property

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[5] In addition to considering the documents attached to the first amended complaint (see *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568), we grant the request of Kinecta and MERS to take judicial notice of the 2013 assignment from MERS to Kinecta and the 2013 notice of trustee's sale. (See *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 924, fn. 1; Evid. Code, §§ 452, subd. (h), 459, subd. (a).) The 2013 assignment also may be considered because it was specifically identified in the first amended complaint and purportedly attached to it. (See *City of Port Hueneme v. Oxnard Harbor Dist.* (2007) 146 Cal.App.4th 511, 514.) We decline to take judicial notice of the remaining documents proffered by MERS and Kinecta on the ground the materials provided are not of substantial consequence to the determination of the action. (See *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 418.)

[6] Assured filed a declaration of nonmonetary status pursuant to Civil Code section 2924*l*, stating it maintained a reasonable belief it had been named solely in its capacity as trustee and not due to any acts or omissions on its part. Shetty failed to file any

because the grant deed was executed after Chavol had been divested of the property through the foreclosure sale and rejected Shetty's argument the foreclosure sale was void based on problems with the assignments; Shetty, therefore, lacked standing to pursue his claims. The court additionally stated Shetty's failure to allege he tendered the amount due on the note was fatal to his claims. The court ordered the action dismissed with prejudice.

DISCUSSION

1. *Standard of Review*

A demurrer tests the legal sufficiency of the factual allegations in a complaint. We independently review the superior court's ruling on a demurrer and determine de novo whether the pleading alleges facts sufficient to state a cause of action or discloses a complete defense. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100; *McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) However, we are not required to accept the truth of the legal conclusions pleaded in the complaint. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; *Yhudai v. IMPAC Funding Corp.* (2016) 1 Cal.App.5th 1252, 1257.) We liberally construe the pleading with a view to substantial justice between

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objection to the declaration within the period prescribed by statute. The trial court dismissed the claims against Assured; that dismissal is not the subject of this appeal.

the parties. (Code Civ. Proc., § 452; *Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336, 1340; see *Schifando*, at p. 1081 [complaint must be read in context and given a reasonable interpretation].)

2. *The First Amended Complaint Did Not Allege Facts Sufficient To State a Claim for Slander of Title*

In order to state a claim for slander of title, a plaintiff must allege "(1) a publication, (2) which is without privilege or justification, (3) which is false, and (4) which causes direct and immediate pecuniary loss." (*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal.App.4th 1040, 1051.)

Shetty alleged Kinecta[7] slandered title to the Carmenita Lane property by causing false documents to be recorded, specifically the notice of trustee sale and trustee's deed upon sale. Those documents were false, Shetty argues, because Kinecta had no interest in the deed of trust at the time the documents were recorded and, therefore, had no authority to foreclose on the property. Shetty bases this argument on two separate theories: First, Kinecta did not have an interest in the note at the time of the sale and consequently had no interest in the deed of trust; second, the assignment from MERS to Kinecta was false or fraudulent and did not pass any interest in the deed of trust to Kinecta. Both arguments fail.

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[7] MERS was not named in the slander of title claim.

a. *Allegations Kinecta did not have an interest in the note at the time of foreclosure do not render the foreclosure documents false*

Shetty contends, even if the MERS assignment of the deed of trust to Kinecta was valid, Kinecta had no right to foreclose because it was not the holder of the promissory note, which had been previously sold to Dovenmuehle. In support of this proposition, Shetty relies on *Cervantes v. Countrywide Home Loans, Inc.* (9th Cir. 2011) 656 F.3d 1034, in which the Ninth Circuit stated: "[T]o have the legal power to foreclose, the trustee must have authority to act as the holder, or agent of the holder, of both the deed and the note together." (*Id.* at p. 1039.) Shetty's reliance on *Cervantes* is misplaced. The foreclosure at issue in that case took place in Arizona pursuant to Arizona law; and, to support the statement the foreclosing entity must be the owner of the note, the court relied on cases applying the law of Kansas, Maine and Oregon. (*Id.* at pp. 1039, 1044.)

California courts, in contrast, have repeatedly held "California's statutory nonjudicial foreclosure scheme ([Civ. Code] §§ 2924-2924k) does not require that the foreclosing party have a beneficial interest in or physical possession of the note." (*Shuster v. BAC Home Loans Servicing, LP* (2012) 211 Cal.App.4th 505, 511; accord, *Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1004 ["we decline to read additional requirements into the nonjudicial foreclosure statute requiring the note and the deed of trust to be held by the same party"]; *Debrunner v. Deutsche Bank National Trust Co.* (2012) 204 Cal.App.4th 433, 440 ["[w]e likewise see nothing in the applicable statutes that precludes foreclosure when the foreclosing party does not possess the original promissory note"].) In short, Shetty's argument that

Kinecta could not initiate foreclosure proceedings because it was not the holder of the note is entirely without merit.[8]

b. *Shetty does not have standing to challenge the assignment from MERS to Kinecta*

Shetty's second theory in support of his argument the foreclosure documents were false is that the 2013 assignment from MERS to Kinecta was fabricated. The recorded assignment was signed by Sangtip Chienpradap, Assistant Secretary of MERS, and was notarized by Judy Stutz, a notary public in California. Shetty contended Chienpradap did not actually sign the document, but instead it was signed by a "robo-signer." Shetty further alleged the notarization was false because Chienpradap did not execute the document in the presence of Stutz. Even if Chienpradap did execute the document, Shetty argued, he was not an agent or employee of MERS at the time. Finally, Shetty alleged the assignment was fabricated by combining two separate documents.

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[8] The arguments in Shetty's briefs on appeal are difficult to comprehend. Nonetheless, it appears he may be attempting to argue the foreclosure was invalid because, when Kinecta sold the note to Dovenmuehle, Kinecta's interest in the deed of trust automatically followed the note by operation of law; thus, Kinecta had no interest in the deed of trust to assign to MERS, and MERS had no interest to assign back to Kinecta. To the extent Shetty purports to advance this argument, it was forfeited because not raised in the trial court. (See *Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 417 [issues not raised in trial court cannot be raised for first time on appeal]; *Zimmerman, Rosenfeld, Gersh & Leeds LLP v. Larson* (2005) 131 Cal.App.4th 1466, 1488.)

The Supreme Court recently held a plaintiff may challenge an assignment of a deed of trust when the allegations, if true, would render the assignment "void, and not merely voidable at the behest of the parties to the assignment . . . ." (*Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 923.) The Court explained, "[i]f a purported assignment necessary to the chain by which the foreclosing entity claims that power is absolutely void, meaning of no legal force or effect whatsoever [citations], the foreclosing entity has acted without legal authority by pursuing a trustee's sale . . . ." (*Id.* at p. 935.) On the other hand, "[w]hen an assignment is merely voidable, the power to ratify or avoid the transaction lies solely with the parties to the assignment; the transaction is not void unless and until one of the parties takes steps to make it so. A borrower who challenges a foreclosure on the ground that the assignment to the foreclosing party bore defects rendering it voidable could thus be said to assert an interest belonging solely to the parties to the assignment rather than to herself." (*Id.* at p. 936.) The Court limited its ruling in *Yvanova* to determining whether a plaintiff has standing to bring wrongful foreclosure claims; however, the principle has since been applied in several federal cases in which the plaintiff alleged slander of title based on a faulty assignment. (See *Pratap v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014) 63 F.Supp.3d 1101, 1108-1110; *Reed v. Wilmington Trust, N.A.* (N.D. Cal. June 3, 2016, 16-cv-01933-JSW) 2016 U.S. Dist. Lexis 72792, app. pending.) We agree with those cases that the reasoning in *Yvanova* applies equally to slander of title claims: Shetty has standing to challenge the falsity of the assignment only if he alleges the assignment was void and not merely voidable.

Other than setting forth the basic explanation of the difference between void and voidable documents, the Supreme Court declined in *Yvanova* to provide guidance on what types of defects might render an assignment void; and "[i]llustrations of agreements that are wholly void of legal effect are not very numerous." (1 Corbin, Contracts (1993) § 1.7, p. 21.) Generally, though, documents may be considered void when they "violate[] an express mandate of the law or the dictates of public policy" (*Colby v. Title Ins. and Trust Co.* (1911) 160 Cal. 632, 644; see also *Estate of Molino* (2008) 165 Cal.App.4th 913, 925 ["'[i]f a bargain violates public policy, it is void and of no legal effect'"]) or when the object of the contract is "wholly impossible . . . or so vaguely expressed as to be wholly unascertainable" (Civ. Code, § 1598). Likewise a contract will be void when it involves fraud in the inception of the agreement, such as where the "promisor is deceived as to the nature of his act, and actually does not know what he is signing, or does not intend to enter into a contract at all . . . ." (*Ford v. Shearson Lehman American Express, Inc.* (1986) 180 Cal.App.3d 1011, 1028.)[9]

The first amended complaint did not include allegations the assignment from MERS to Kinecta violated law or public policy, was wholly impossible, unascertainable or involved fraud in the inception. The only allegations supporting Shetty's claim the assignment was void were conclusory allegations of robo-signing, lack of authority and false notarization. Even if those allegations were sufficiently factually specific to withstand a demurrer for uncertainty or a motion to strike, the alleged defects would

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[9] Unlike fraud in the inception, fraud in the inducement renders a contract merely voidable. (*Ford v. Shearson Lehman American Express*, *Inc., supra*, 180 Cal.App.3d at p. 1028.)

render the assignment merely voidable. (See *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 820 [agreeing with the "prevailing view that plaintiff homeowners lack standing to challenge the validity of robo-signatures" because such defects render the document voidable]; *Pratap v. Wells Fargo Bank, N.A.*, *supra*, 63 F.Supp.3d at p. 1109 ["to the extent that an assignment was in fact robo-signed, it would be voidable, not void, at the injured party's option"]; *Reed v. Wilmington Trust, N.A.*, *supra*, 2016 U.S. Dist. Lexis 72792 [same]; *Maynard v. Wells Fargo Bank, N.A.* (S.D.Cal. Sept. 11, 2013) 12cv1435 AJB (JMA)) 2013 U.S. Dist. Lexis 130800 [same].) Accordingly, Shetty is without standing to challenge the 2013 assignment from MERS to Kinecta and cannot premise a slander of title claim on its alleged falsity. (See *Pratap,* at pp. 1108-1110 [dismissing claim for slander of title when plaintiff asserted assignment was robo-signed]; *Reed,* at pp. *17-18 [same].)

3. *The First Amended Complaint Did Not Allege Facts Sufficient To State a Claim To Quiet Title*

To state a quiet title claim, a plaintiff must plead: (1) a description of the property that is the subject of the action; (2) the title of the plaintiff as to which a determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which the determination is sought; and (5) a prayer for the determination of the title of the plaintiff against the adverse claims. (Code Civ. Proc., § 761.020.)

In support of his claim to title of the property against Kinecta[10] Shetty relies on the same two arguments: Kinecta could not initiate foreclosure proceedings because it had no interest in the promissory note, and Kinecta had no interest in the deed of trust because the assignment from MERS was void. As discussed, these arguments fail. The allegation Kinecta had no interest in the promissory note does not invalidate the foreclosure sale. Likewise, Shetty cannot claim title based on the allegations of irregularities in the assignment because he does not have standing to challenge the assignment. Accordingly, Shetty has not articulated a basis on which his claim to title is superior to Kinecta's.

4. *The First Amended Complaint Did Not Allege Facts Sufficient To Support Cancellation of Written Instruments*

Civil Code section 3412 provides a "written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled." Thus, to plead a right to cancellation under this section, a plaintiff must allege the instrument is "void or voidable" and would cause "serious injury" if not canceled. (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 818-819.) Further, a plaintiff must allege specific facts, "not mere conclusions, showing the apparent validity of the instrument designated, and point out the reason for asserting that it is actually invalid." (*Ephraim v. Metropolitan Trust Co.* (1946) 28 Cal.2d 824, 833-834; accord, *Wolfe v. Lipsy* (1985) 163 Cal.App.3d 633, 638 ["[t]o state a cause

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[10] MERS was not named in the quiet title claim.

of action to remove a cloud [under Civil Code section 3412], instead of pleading in general terms that the defendant claims an adverse interest, the plaintiff must allege, inter alia, facts showing actual invalidity of the apparently valid instrument or piece of evidence"], disapproved on other grounds, *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 35-36.)

Shetty sought cancellation against Kinecta[11] of the assignment from MERS to Kinecta, the notice of trustee's sale and the trustee's deed upon sale. He alleged these documents resulted from "fraudulent activity" and should be declared "ineffective, null and void." These arguments were again based on the same arguments discussed above and are ineffective for the same reasons. Shetty cannot claim the documents are invalid based on Kinecta's lack of interest in the note, nor does Shetty have standing to challenge the validity of the assignment.

5. *The First Amended Complaint Did Not Allege Facts Sufficient To State a Claim for Unjust Enrichment/Restitution*

The first amended complaint alleged Kinecta[12] was unjustly enriched because it "had no right to payments on the loans [*sic*] after sale of debt instruments to a third party" and requested return of "all payments so made and monies received from the proceeds of the sale of plaintiff's property."

"There is no cause of action for unjust enrichment. Rather, unjust enrichment is a basis for obtaining restitution based on quasi-contract or imposition of a constructive trust." (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1490.)

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[11] MERS was not named in the cancellation claim.

[12] MERS was not named in the unjust enrichment/restitution claim.

"Under the law of restitution, an individual may be required to make restitution if he is unjustly enriched at the expense of another. [Citation.] A person is enriched if he receives a benefit at another's expense. . . . Even when a person has received a benefit from another, he is required to make restitution 'only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it.'" (*Ghirardo v. Antonioli* (1996) 14 Cal.4th 39, 51.)

Shetty has not pleaded a claim for quasi-contract or imposition of a constructive trust, nor has he made allegations of any other wrongdoing warranting the remedy of restitution. As discussed, Shetty failed to plead facts showing any actions taken by Kinecta were wrongful and resulted in enrichment of Kinecta unjust to him. Accordingly the claim for unjust enrichment/restitution fails.

6. *The First Amended Complaint Did Not Allege Facts Sufficient To State a Claim for Unfair Business Practices*

California's unfair competition law (Bus. & Prof. Code, § 17200 et seq.) (UCL) prohibits, and provides civil remedies for, unfair competition, which it defines as "any unlawful, unfair or fraudulent business act or practice." (*Id.* at § 17200.) In 2004 California voters "materially curtailed the universe of those who may enforce" the UCL by enacting Proposition 64. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320.) Proposition 64 limited private standing under the UCL to any "'"person who has suffered injury in fact and has lost money or property" as a result of unfair competition.'" (*Id.* at pp. 320-321, quoting Bus. & Prof. Code, § 17204.) "'The phrase "as a result of" in its plain and ordinary sense means "caused by" and requires a showing of a

causal connection or reliance . . . .'" (*Kwikset Corp*., at p. 326.) Thus, in order to pursue a claim under the UCL, a plaintiff must "(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic injury,* and (2) show that the economic injury was the result of, i.e., *caused by,* the unfair business practice . . . that is the gravamen of the claim." (*Id.* at p. 322; accord, *Sarun v. Dignity Health* (2014) 232 Cal.App.4th 1159, 1166.) Further, the injury in fact must be suffered personally by the plaintiff—"under the unfair competition law an injured [individual's] assignment of rights cannot confer standing on an uninjured assignee." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1002.)

Shetty fails to address directly whether the first amended complaint alleged injury and causation sufficiently to state a claim under the UCL. Reviewing the pleading liberally, we conclude it did not. The first amended complaint averred the injuries suffered because of Kinecta's and MERS's purported unfair business practices were loss of property resulting from improper and premature foreclosure proceedings, recording false and misleading documents, failing to disclose the principal for whom documents were being executed and recorded, demanding and accepting payments not owed to them and foreclosing without authority to do so. However, any alleged injuries resulting from those actions affected only Chavol. All the actions complained of were taken when Chavol owned the property and resulted in a loss only to Chavol. Shetty failed to allege any of those actions caused injury to him personally. Recovery based on a derivative loss and an assignment of rights would contravene the statutory intent only the party personally injured recover under the UCL. (See *Amalgamated Transit Union, Local 1756,*

AFL-CIO v. Superior Court, *supra,* 46 Cal.4th at p. 1002 ["[t]o allow a *noninjured* assignee of an unfair competition claim to stand in the shoes of the *original, injured claimant* would confer standing on the assignee in direct violation of the express statutory requirement in the unfair competition law"]; see also *Drazan v. Atlantic Mutual Ins. Co.* (N.D. Cal. June 29, 2010, No. C 10-01371 SI) 2010 U.S. Dist. Lexis 64345, at pp. *7-9 [shareholders/assignees' allegation of direct injury by virtue of diminution in stock value insufficient to allege standing for UCL claim when no unfair business practices alleged to have directly affected shareholder/assignees].)

As the purported current owner of the property, Shetty could possibly allege a direct loss from the cloud he contends exists on the property's title. But Shetty has not alleged any uncertainty in the chain of title was caused by unfair business practices. To the contrary, any injury Shetty suffered because of uncertain title was caused by his decision to accept a grant deed from Chavol knowing certain documents had been recorded and a foreclosure sale had already taken place. Shetty has not even attempted to allege causation: The first amended complaint contained no statement Shetty would not have accepted the grant deed but for the allegedly unfair practices of Kinecta and MERS. In the absence of any such allegations, Shetty failed to adequately state a claim for violation of the UCL. (See *Kwikset Corp. v. Superior Court*, *supra,* 51 Cal.4th at p. 322.)

7. *The First Amended Complaint Did Not Allege Facts Sufficient To State a Claim for Declaratory Relief*

Declaratory relief is available to "[a]ny person interested under a written instrument . . . who desires a declaration of his

or her rights or duties with respect to another, or in respect to, in, over or upon property . . . in cases of actual controversy relating to the legal rights and duties of the respective parties . . . ." (Code Civ. Proc., § 1060; see *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 728 ["[a] complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties under a written instrument and requests that these rights and duties be adjudged by the court"]; *Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 615.)

Shetty has failed to allege an actual controversy relating to Kinecta or MERS. The first amended complaint alleged an actual controversy exists regarding the parties' "respective rights and duties in that Plaintiff contends that the named defendants . . . failed to comply with mandatory statutory notices of foreclosure sale . . . ." The pleading requested a declaration stating Kinecta and MERS fraudulently recorded documents, are not beneficiaries of the note and deed of trust, had no standing to foreclose and MERS had no authority to assign the deed of trust to Kinecta. Accordingly Shetty's request for declaratory relief is based on the same allegations of wrongdoing contained in his other claims. Because we find Shetty has failed to state a claim in each instance, the claim for declaratory relief fails as a matter of law. (See *Ratcliff Architects v. Vanir Construction Management, Inc.* (2001) 88 Cal.App.4th 595, 607.)

8. *The Trial Court Did Not Abuse Its Discretion in Denying Leave To Amend*

"'If we see a reasonable possibility that the plaintiff could cure the defect by amendment, then we conclude that the trial court abused its discretion in denying leave to amend. If we

determine otherwise, then we conclude it did not.' [Citation.] "'The burden of proving such reasonable possibility is squarely on the plaintiff.'" [Citation.] To satisfy this burden, "'a plaintiff 'must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading'"' by clearly stating not only the legal basis for the amendment, but also the factual allegations to sufficiently state a cause of action." (*Graham v. Bank of America, N.A.*, *supra*, 226 Cal.App.4th at p. 618.)

Shetty has failed to explain how, if given the opportunity, he would amend his complaint to properly assert the claims discussed. Accordingly, there is no basis to reverse the trial court's denial of leave to amend.

DISPOSITION

The judgment is affirmed. Kinecta and MERS are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J. KEENY, J.*

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