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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

ROSSLYN BUTLER, Plaintiff and Appellant, v. CHUNYI QIAN et al., Defendants and Respondents.	B253948 (Los Angeles County Super. Ct. No. BC494336)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kevin C. Brazile, Judge. Affirmed.

Rosslyn Butler, in pro. per., for Plaintiff and Appellant.

Law Offices of Glenn H. Wechsler, Glenn H. Wechsler and Dennis S. Lucey for Defendant and Respondent First American Trustee Servicing Solutions LLC.

Woodruff, Spradlin & Smart, M. Lois Bobak and Patrick M. Desmond for Defendants and Respondents Chunyi Qian and Qiwei Zheng.

Fidelity National Law Group and Kevin R. Broersma for Defendant and Respondent Wells Fargo Bank, N.A.

Appellant Rosslyn Butler brought suit after property in which she held an interest was sold by nonjudicial foreclosure. Asserting claims for wrongful foreclosure and cancellation of instruments, she contended that the trustee who conducted the 2008 foreclosure sale of her property was not authorized to do so under the statutes regulating nonjudicial foreclosures (see Civ. Code, § 2924 et seq.), and that the trustee's deed transferring the property after the foreclosure sale -- and all subsequent transfers -- were void. The trial court sustained demurrers on grounds of statute of limitations, failure to tender, and res judicata, as well as failure to assert cognizable claims for wrongful foreclosure or cancellation. Appellant, who represents herself on appeal, contends the court's rulings were erroneous, but fails to cite to the record in support of any of the factual allegations in her briefs. A Court of Appeal is under no obligation to consider points raised without citation to the location in the record where they may be substantiated. (*Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1037; *In re S.C.* (2006) 138 Cal.App.4th 396, 406; see Cal. Rules of Court, rule 8.204(a)(1)(C).) Nonetheless, we review the appeal on the merits and conclude: (1) the trustee was authorized to conduct the sale and execute the trustee's deed; (2) appellant's claims were barred by res judicata; and (3) appellant's claims were barred by the statute of limitations.[1]

[1] None of the parties challenged appellant's standing. We note that the issue whether a borrower has standing to bring an action for wrongful foreclosure challenging an assignment of a note and deed of trust on the basis of defects allegedly rendering the assignment void is currently before the Supreme Court in *Yvanova v. New Century Mortgage Corp.*, rev. granted August 27, 2014, S218973.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Underlying Complaint*

On October 22, 2012, appellant Rosslyn Butler brought suit against respondents First American Loanstar Trustee Services (First American), Aurora Loan Services, LLC (Aurora), Chunyi Qian, Qiwei Zheng, Wells Fargo Bank, N.A. (Wells Fargo) and Mortgage Electronic Registration Systems (MERS).[2] According to the facts alleged in the operative first amended complaint (FAC), appellant was deeded a home on Fairfax Avenue in Los Angeles by Johnathan Bahat, recording the deed on February 1, 2007. At the time, the property was subject to a deed of trust (DOT) to secure a loan in the amount of $676,000. The DOT identified Bahat as the borrower, NBGI, Inc. as the lender, MERS as both the "nominee" of the lender and the "beneficiary," and Chicago Title Company as the trustee.[3]

On March 26, 2007, respondent First American recorded a notice of default.[4] The substitution of trustee naming First American as the successor trustee to Chicago Title was executed subsequent to that date, April 25, 2007, and recorded on May 24, 2007.[5] On June 29, 2007, First American recorded a notice of trustee's sale. An assignment of the beneficial interest in the note and DOT to Aurora was

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[2] "Under the MERS System . . . MERS is designated as the beneficiary in deeds of trust, acting as 'nominee' for the lender and granted the authority to exercise legal rights of the lender." (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 267.)

[3] The DOT and other recorded documents, including the substitution of trustee, the notice of trustee's sale, an assignment of the beneficial interest in the DOT to Aurora, and the trustee's deed were attached as exhibits to the FAC. In addition, they were the subject of judicial notice.

[4] Appellant did not dispute that the note was in default on that date.

[5] The body of the document described MERS as "nominee for NGBI, Inc." and "the original beneficiary under [the DOT]." The signature line of the document stated MERS was "acting solely as nominee for Aurora Loan Services."

executed by MERS "as nominee for NBGI, Inc." on September 19, 2007, and recorded on October 1, 2007, after the substitution of trustee and notice of trustee's sale were executed and recorded.

On February 29, 2008, the trustee's sale of the property took place and Aurora tendered the unpaid debt, which by then had increased to $771,125. A few days later, First American executed and recorded a trustee's deed, transferring the property to Aurora. Over a year later, on October 9, 2009, Aurora transferred the property by grant deed to respondents Qian and Zheng, husband and wife, who encumbered the property with a new DOT securing a note to respondent Wells Fargo.

Based on this sequence of events, appellant contended First American was never properly appointed trustee under the Bahat DOT and, therefore, had no power to conduct a trustee's sale or transfer the property. According to the FAC, MERS's failure to assign the DOT to Aurora prior to substituting First American for the original trustee, together with its claim to be acting "as nominee for Aurora" in the substitution of trustee form, rendered the deed issued by First American after the trustee's sale "null and void" and all subsequent transfers and encumbrances invalid.[6]

The FAC asserted claims for wrongful foreclosure under Civil Code sections 2934a and 2923.5, along with a claim for cancellation of the trustee's deed upon sale, the grant deed to Qian and Zheng, and the DOT held by Wells Fargo. Appellant also sought injunctive and declaratory relief.

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[6] Although the FAC contained allegations that two MERS employees fraudulently executed certain documents, on appeal, appellant bases her claims on the timing of the execution and recordation of the substitution of trustee and assignment forms, not on the conduct or capacity of the persons who signed them.

B. *Prior Proceedings*

In April 2008, after the foreclosure, Aurora filed an action for unlawful detainer regarding the Fairfax Avenue property. The complaint alleged that the property had been conveyed to Aurora in accordance with Civil Code section 2924 et seq. under the power of sale contained in Bahat's DOT, and that Aurora was "the owner of, and entitled to immediate possession of the property." In June 2008, Aurora and appellant entered into a stipulated judgment allowing Aurora to take possession of the premises.[7]

In July 2008, appellant initiated a lawsuit, *Butler v. Dozier, et al.*, Los Angeles Superior Court Case no. BC394395, naming a number of parties, including Bahat and Aurora.[8] The complaint alleged that appellant was the rightful owner of the Fairfax Avenue property, and had been fraudulently induced to transfer title to Bahat and to enter into a number of loan agreements as part of a scheme designed by Bahat and others to drain the equity in the property. Aurora was named in four causes of action: slander of title, injunctive relief, cancellation of instrument and quiet title. In each of those causes of action, appellant alleged that because she had recorded a grant deed from Bahat on February 1, 2007, she was entitled to notice of the foreclosure action, which she claimed not to have received. She alleged that had she been given such notice, she "would have made efforts to save her property from foreclosure by negotiating . . . and obtaining new financing."

Aurora demurred to the complaint. It presented documentary evidence subject to judicial notice that it had given notice to appellant. It further argued that

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[7] The trial court took judicial notice of the unlawful detainer complaint and stipulated judgment.

[8] The trial court took judicial notice of the complaint, Aurora's demurrer, appellant's opposition, and the court's judgment and order in the lawsuit.

its demurrer should be sustained because appellant failed to plead facts otherwise undermining the validity of the trustee's sale, and failed to rebut the presumption that the sale and resulting trustee's deed were conducted properly. In opposition, appellant reasserted the allegations of her complaint and denied she had been given adequate notice. In July 2009, the trial court sustained Aurora's demurrer without leave to amend and entered judgment in Aurora's favor. Appellant did not appeal, and the judgment has since become final.

C. *Underlying Demurrers*

Separate demurrers were filed by (1) Aurora and MERS, (2) First American, and (3) Qian and Zheng to the underlying complaint and FAC.[9] The court sustained the demurrers, without leave to amend, on multiple grounds. First the court found that appellant's action was barred by the statute of limitations. Because appellant had alleged the assignments had been fraudulently executed, the court found the three-year statute of limitations for fraud applied and ran from the date the notice of default was issued in March 2007. Based on the accrual date of March 2007, the court further found that even assuming a four- or five-year statute of limitations, appellant's complaint was untimely. The court also found that claim preclusion and collateral estoppel barred the claims with respect to Aurora because the same issues raised in the FAC were decided in Aurora's favor in *Butler v. Dozier*.

With respect to appellant's claims for wrongful foreclosure, the court found she had failed to identify specific facts to support her claim that the assignments were fraudulent or that MERS lacked authority to execute the substitution of trustee or initiate the foreclosure process on its own. The court further found there

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[9] Wells Fargo joined in Qian and Zheng's demurrer.

was no private right of action for wrongful foreclosure under Civil Code section 2923.5 after the trustee's sale.[10] As for the claim for cancellation of instruments, the court found no facts alleged in the FAC refuted the presumption that the sale was valid or suggested that Qian and Zheng were not bona fide purchasers for value. Finally, the court dismissed appellant's claims to entitlement to injunctive and declaratory relief, finding them unsupported by a substantive claim. Judgment was entered and this appeal followed.[11]

DISCUSSION

A. *Standard of Review*

"'A demurrer tests the legal sufficiency of the complaint . . . .'" (*Flying Dutchman Park, Inc. v. City and County of San Francisco* (2001) 93 Cal.App.4th 1129, 1134.) The standard of review of an order sustaining a demurrer is well established. We review the order de novo, "exercising our independent judgment about whether the complaint states a cause of action as a matter of law. [Citations.]" (*Ibid*.) """We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we

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[10] Civil Code section 2923.5 requires that a lender, before noticing a default under a DOT, contact the borrower to assess the borrower's financial situation and explore options to prevent foreclosure. In *Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 214, 235, the court held that the remedy for noncompliance with section 2923.5 is postponement of the foreclosure sale, and "nothing more," precluding a claim under section 2923.5 after the foreclosure sale has occurred. On appeal, appellant does not raise any issue with respect to her section 2923.5 wrongful foreclosure claim.

[11] Following briefing, but prior to oral argument, at appellant's request we dismissed her appeal as to respondents Aurora and MERS.

determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.' [Citations.]" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) A judgment based on an order sustaining a demurrer may be affirmed on appeal if any one of multiple grounds for the demurrer is well taken whether or not it was the ground on which the trial court relied. (*Casey v. U.S. Bank Nat. Assn*. (2005) 127 Cal.App.4th 1138, 1144.)

B. *Grounds for Sustaining Demurrer*

Appellant contends the allegations of the FAC supported her claims for wrongful foreclosure and cancellation, and for injunctive and declaratory relief based on First American's alleged lack of authority to act as trustee when it conducted the trustee's sale. She relies on: (1) the language in the substitution of trustee document stating that MERS was "acting solely as nominee for Aurora Loan Services"; and (2) the fact that at the time the substitution of trustee was executed (April 25, 2007) and recorded (May 24, 2007), Aurora had no apparent interest in the DOT and no authority to substitute the trustee, as the assignment to Aurora did not occur until September 19, 2007. For the reasons discussed below, we conclude respondents' demurrers were properly sustained.

1. *First American's Authority to Act as Trustee*

The elements of a claim for wrongful foreclosure include allegations that "the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale

of real property pursuant to a power of sale in a mortgage or deed of trust," and that "the party attacking the sale . . . was prejudiced or harmed." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 104.) Nonjudicial foreclosure sales are presumed valid, and the party challenging the sale has the burden of pleading and proving both an improper procedure and resulting prejudice. (*Fontenot v. Wells Fargo Bank, supra,* 198 Cal.App.4th at pp. 270, 272.) Here, appellant did not dispute that the Fairfax Avenue property was subject to a deed of trust securing a loan with a balance due in excess of $700,000; nor did she dispute that the loan was in default. She did not allege she had the resources to pay off the loan or even to bring it current. Thus, appellant failed to establish prejudice.

Relying on *Dimock v. Emerald Properties* (2000) 81 Cal.App.4th 868 (*Dimock*), appellant contends First American had no authority to conduct the trustee's sale or convey the property to Aurora, and that the March 2008 trustee's deed to Aurora should be considered null and void regardless of her financial abilities. The facts here are markedly different from those in *Dimock*, and lead to the conclusion that First American was legally authorized to act as trustee and to execute the trustee's deed.

In *Dimock*, the lender/beneficiary recorded a substitution of trustee in August 1996, substituting "Calmco" for the trustee named in the original DOT: "Commonwealth." (*Dimock, supra,* 81 Cal.App.4th at p. 872.) Nevertheless, Commonwealth went forward with a trustee's sale, which took place in September 1996, giving the buyer a trustee's deed executed by Commonwealth. (*Id.* at pp. 872-873.) The original homeowner brought suit, contending the sale by Commonwealth was void. (*Id.* at p. 873.) On cross-motions for summary judgment, it was undisputed that the lender recorded a "valid and bona fide substitution" which "substituted Calmco as trustee under the subject deed of trust"; that "the substitution of Calmco was never subject to any further recorded

substitution by [the lender]"; and that "the deed conveying the property [at the trustee's sale] was executed by Commonwealth, not Calmco." (*Id*. at p. 874.) On these facts, the Court of Appeal found that "Commonwealth had no power to convey [the] property," and that the deed issued at the trustee's sale was "void[,] . . . a complete nullity with no force or effect . . . ." (*Id*. at p. 876.) Accordingly, the court directed the trial court to enter a judgment quieting title in favor of the original owner, "subject to such encumbrances as existed at the time of the purported sale by Commonwealth." (*Id*. at p. 874.) The court's decision was based on "practical necessity": "[T]here simply cannot be at any given time more than one person with the power to conduct a sale under a deed of trust. We would create inestimable levels of confusion, chaos and litigation were we to permit a beneficiary to appoint multiple trustees, each one retaining the power to sell a borrower's property." (*Id*. at p. 876.)

Here, in contrast, there was only one trustee with the power to sell the property -- First American -- and no possibility of confusion. Prior to the trustee's sale, First American was substituted in for the original trustee in a document executed by MERS and duly recorded. MERS was named in the DOT as both the "nominee" of the lender (NBGI) and the "beneficiary" of the DOT. In the substitution of trustee form, MERS described itself as the "beneficiary" and "the nominee of NBGI," as well as the nominee of Aurora. Under Civil Code section 2934a, subdivision (a)(1)(A), a new trustee may be substituted for the original by the recording of a substitution "executed and acknowledged by . . . all of the beneficiaries under the trust deed . . . ." As the beneficiary under the DOT and NBGI's nominee, MERS had that power. (See *Fontenot v. Wells Fargo Bank, N.A., supra*, 198 Cal.App.4th at p. 273 ["[T]he legal implication of [MERS's designation as beneficiary under the deed of trust and nominee of the lender] is that

MERS may exercise the rights and obligations of a beneficiary of the deed of trust, a role ordinarily afforded the lender . . . ."].)

Moreover, to the extent MERS purported to act on behalf of Aurora, the assignment of an interest in the DOT to that entity took place in September 2007, months before the February 2008 trustee's sale. Aurora raised no objection to the substitution of trustee and made no effort to withdraw it or to designate another trustee. The conclusion to be drawn from these facts, derived from the allegations of and exhibits to the FAC and undisputed by appellant, is that First American was the trustee at the time of the sale, properly substituted in by MERS, acting in its role as beneficiary under the DOT and nominee of both the original lender (NBGI) and its subsequent assignee (Aurora). Accordingly, First American, as trustee, had the authority to conduct the sale and execute the trustee's deed, and appellant's contentions to the contrary in the FAC fail to support a viable claim for either wrongful foreclosure or cancellation of instruments.

2. *Res Judicata*

Alternatively, the demurrers were properly sustained under the doctrine of res judicata. "Under this doctrine, all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date. '"Res judicata precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief."'" (*Mycogen Corp. v. Monsanto Co*. (2002) 28 Cal.4th 888, 897 (*Mycogen*).) The doctrine has two aspects. The first -- claim preclusion -- "prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." (*Mycogen*, *supra*, 28 Cal.4th at p. 896; see *Estate of Dito* (2011) 198 Cal.App.4th 791, 801 ["A claim raised in a second suit is 'based on the same cause of action' as one asserted in a prior action if they are both

premised on the same 'primary right.' [Citation.] 'The plaintiff's primary right is the right to be free from a particular injury, regardless of the legal theory on which liability for the injury is based. [Citation.]'"].) The second -- issue preclusion or collateral estoppel -- "'precludes relitigation of issues argued and decided in prior proceedings.' [Citation.]" (*Mycogen*, *supra*, at p. 896.)

There are two significant differences between claim preclusion and issue preclusion/collateral estoppel: "First, issue preclusion does not bar entire causes of action[;] . . . it prevents relitigation of previously decided issues." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) Second, claim preclusion applies only if both parties to the subsequent action are identical to or in privity with the parties to the previous action (*Mycogen*, *supra*, 28 Cal.4th at p. 896), whereas issue preclusion can be invoked by a stranger to the previous action. (*DKN Holdings LLC v. Faerber*, *supra*, 61 Cal.4th at pp. 824-825; *Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828-829.) Thus, in its issue preclusion/collateral estoppel aspect, the doctrine of res judicata may "preclude a party to prior litigation from redisputing issues therein decided against [him/her], even when those issues bear on different claims raised in a later case," and also "allow one who was not a party to prior litigation to take advantage, in a later unrelated matter, of findings made against his current adversary in the earlier proceeding." (*Vandenberg v. Superior Court*, *supra*, 21 Cal.4th at pp. 828-829, italics deleted.)

The elements necessary for claim preclusion are: """(1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]"' [Citation.]" (*Boeken v. Philip Morris USA, Inc*. (2010) 48 Cal.4th 788, 797.) Five factors must be satisfied for issue preclusion/collateral estoppel to apply: "First, the issue sought to be

precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

Here, the trial court found that both claim preclusion and collateral estoppel applied based on the judgment entered in Aurora's favor in the *Butler v. Dozier* litigation.[12] It ruled, however, that appellant's claims were barred only with respect to Aurora -- the sole respondent named as a defendant in that litigation. In its claim preclusion aspect, res judicata also bars a subsequent action on the same claims between appellant and those in privity with Aurora. The latter includes all those who "'acquired an interest in the subject matter affected by the judgment through or under one of the parties, as by inheritance, succession, or purchase. [Citations.]'" (*Rice v. Crow* (2000) 81 Cal.App.4th 725, 735, quoting *Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 811.) In this case, respondents Wells Fargo, Qian, and Zheng, as successors to Aurora's interest and purchasers, qualify as parties in privity with Aurora.

Moreover, as the Supreme Court has made clear, issue preclusion/collateral estoppel may be invoked as a defense by a party not in privity with the original defendant, in this case, First American. The validity of the transfer of title to Aurora at the trustee's sale was at issue in *Butler v. Dozier*, it was actually litigated, and it was necessarily decided. Appellant sued Aurora to quiet title to the

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[12] Appellant raised no argument on appeal challenging the propriety of the trial court's findings with respect to the applicability of claim preclusion and collateral estoppel.

Fairfax Avenue property and cancel the trustee's deed issued by First American at the trustee's sale. In its demurrer, Aurora claimed entitlement to dismissal of the claims because no facts suggested the trustee's sale by which it acquired title was invalid in any way other than the alleged failure to provide notice, which it had refuted. Appellant had the opportunity to allege facts challenging First American's authority as trustee to issue the deed to Aurora. The court in *Butler v. Dozier* found in favor of Aurora, and entered judgment on the merits. Appellant's underlying complaint asserted the same injury -- loss of the Fairfax Avenue property -- and sought the same relief -- cancellation of the trustee's deed. The complaint added new facts to support appellant's claim that Aurora's title was invalid, but that claim had been litigated and resolved. Accordingly, the claims in the underlying action were barred by claim preclusion with respect to Aurora, Qian, Zheng and Wells Fargo, and issue preclusion with respect to all respondents.[13]

3. *Statute of Limitations*

The majority of courts have held that actions for cancellation of an instrument are subject to the four-year imitations period found in the catchall provision of Code of Civil Procedure section 343. (*Moss v. Moss* (1942) 20 Cal.2d 640, 644-645; *Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 477, fn. 8; see

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[13] Because we conclude that the final decision on the merits in *Butler v. Dozier* precludes appellant from relitigating the validity of the trustee's deed, we need not resolve whether she is also barred from pursuing Aurora and the parties in privity with it by the stipulated judgment in the unlawful detainer action. (See *Malkoskie v. Option One Mortgage Corp*. (2010) 188 Cal.App.4th 968, 975-976 [where former homeowners stipulated to judgment in unlawful detainer brought by party who acquired property at trustee's sale, their later suit asserting claims for quiet title, cancellation of trustee's deed, and wrongful foreclosure was barred by res judicata/claim preclusion].)

Costa Serena Owners Coalition v. Costa Serena Architecture Com. (2009) 175 Cal.App.4th 1175, 1195 ["[T]he four-year limitations period of section 343 has been applied to claims seeking to set aside all kinds of instruments for a variety of reasons . . . ."]; *Zakaessian v. Zakaessian* (1945) 70 Cal.App.2d 721, 725 [agreeing that "[o]rdinarily a suit to set aside and cancel a void instrument is governed by section 343," but suggesting the three-year statute of limitations in Code of Civil Procedure section 338, subdivision (d) would apply if fraud or mistake were involved]; *Arthur v. Davis* (1981) 126 Cal.App.3d 684, 690 [same].)

Actions to set aside a foreclosure sale are governed by the substance or gravamen of the action. (*Hatch v. Collins* (1990) 225 Cal.App.3d 1104, 1110.)[14] As actions for wrongful foreclosure are often based on the contention that the statutory provisions governing wrongful foreclosures have been violated, they may be governed by the three-year statute of limitations found in Code of Civil Procedure section 338, subdivision (a) (applicable to "'[a]n action upon a liability created by statute, other than a penalty or forfeiture'"). (*Engstrom v. Kallins* (1996) 49 Cal.App.4th 773, 781-782, fn. 8.) More typically, however, such claims are governed by section 338, subdivision (d), applicable to claims based on fraud or mistake. (*Hatch v. Collins, supra,* 225 Cal.App.3d at p. 1110; see *Salazar v. Thomas, supra,* 236 Cal.App.4th at p. 477.) Such actions accrue when foreclosure proceedings are initiated (*Engstrom v. Kallins, supra,* 49 Cal.App.4th at p. 783), unless accrual is postponed by the discovery rule. (*Hatch v. Collins, supra,* at p. 1110; *Arthur v. Davis, supra,* 126 Cal.App.3d at p. 690.)

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[14] The same is true of actions to quiet title: "courts refer to the underlying theory of relief to determine the applicable period of limitations." (*Salazar v. Thomas, supra,* 236 Cal.App.4th at p. 476, citing *Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560; accord, *Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 615.)

The underlying complaint was filed on October 22, 2012, more than five years after initiation of foreclosure proceedings in March 2007, and more than four years after appellant first challenged the validity of Aurora's title in *Butler v. Dozier*. Appellant alleged no facts supporting a contention that the statute of limitations should be tolled. (See *Union Carbide Corp. v. Superior Court* (1984) 36 Cal.3d 15, 25 ["'[I]f on the face of the complaint the action appears barred by the statute of limitations, plaintiff has an obligation to anticipate the [statute of limitations] defense and plead facts to negative the bar.'"].) Her claims for wrongful foreclosure and cancellation of instruments are thus barred by the applicable statutes of limitations.[15]

C. *Conclusion*

Neither in the trial court nor on appeal does appellant suggest any amendment she could offer to cure the defects in the FAC. Accordingly, the trial court properly sustained the demurrers without leave to amend.

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[15] Citing no authority, appellant contends that the applicable statute of limitations is found in Code of Civil Procedure section 318, which provides: "No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff . . . was seised or possessed of the property in question, within five years before the commencement of the action." Our review of the applicable authorities persuades us that the statute of limitations for appellant's claims are those found in Code of Civil Procedure sections 338 and 343, under either of which her claims are barred.

DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.