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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SUSAN L. FERGUSON et al., Plaintiffs and Appellants, v. AVELO MORTGAGE, LLC, Defendant and Respondent.	B223447 (Los Angeles County Super. Ct. No. EC049118)

APPEAL from an order of the Superior Court of Los Angeles County, David S. Milton, Judge. Affirmed.

Susan L. Ferguson, in pro. per, and for Plaintiffs and Appellants.

McCarthy & Holthus, James M. Hester, Sasan Mirkarimi; and Melissa Coutts for Defendant and Respondent.

Joseph Huynh obtained a loan to purchase a house. Appellants, Susan L. Ferguson and Brent V. Barry, were tenants at the time of the purchase.[1] Huynh executed a promissory note, secured by a deed of trust on the house. Respondent, Avelo Mortgage, LLC, was assigned the beneficial interest under the deed of trust by the original beneficiary, Mortgage Electronic Registration Systems (MERS). Prior to the assignment, respondent executed a substitution of trustee replacing the original trustee with Quality Loan Service Corporation (Quality). Quality then initiated a nonjudicial foreclosure proceeding against Huynh and respondent purchased the house at a trustee sale. Subsequently, Huynh executed a quitclaim deed in favor of appellants. Appellants sued respondent to quiet title. Respondent demurred, arguing that appellants must plead tender of the full amount due on the original purchase loan before seeking to vacate the foreclosure sale. The trial court sustained respondent's demurrer without leave to amend and dismissed appellants' suit. On appeal, appellants argue they need not plead tender because they are challenging the legality of the foreclosure sale, not a procedural irregularity. We do not agree.

FACTUAL AND PROCEDURAL SUMMARY

In November 2006, Huynh purchased a house (the property) in Burbank, California. Appellants were tenants at the time of the purchase. Huynh executed a deed of trust to secure a $600,000 loan from New Century Mortgage Corporation (New Century) in order to purchase the property. The deed of trust named New Century as the lender, MERS as lender's nominee and beneficiary under the deed of trust, and First American Title as the trustee. The deed of trust empowered the trustee with the power of sale. In June 2007, Huynh executed a grant deed to the Huynh Fairview Trust, with Trust Holding Service Company (THS) as trustee.

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[1] Susan Ferguson, an attorney, appears here in propria persona and as counsel for her co-appellant Brent Barry.

On August 2, 2007, respondent executed a substitution of trustee, replacing First American Title with Quality. The next day, Quality, as an agent of the beneficiary under the deed of trust, recorded a notice of default against Huynh for failing to make payments due on the loan. On the same day, Quality recorded an election to sell under the deed of trust. The August 2, 2007 substitution of trustee was not recorded until November 9, 2007. On August 22, 2007, MERS assigned all beneficial interest under the deed of trust to respondent. The assignment was recorded on August 30, 2007.

Meanwhile, Huynh made no loan payments and Quality executed and delivered a notice of trustee sale on November 4, 2007. The notice of sale was recorded on November 9, 2007. Huynh did not object to the foreclosure. Quality conducted a nonjudicial foreclosure sale and respondent subsequently purchased the property in July 2008 for $400,000. The sale deed was recorded, indicating that the amount of unpaid debt plus costs was $663,128.65.

On June 27, 2009, Huynh executed a quitclaim deed on the property, in favor of appellants. The quitclaim deed was recorded on July 1, 2009.

On October 8, 2009, appellants brought an action against respondent to quiet title. They also sued Huynh for fraud and THS and 10 Doe defendants for rent skimming. Of these, only respondent is a party in this appeal. Respondent demurred, asserting that appellants failed to state a cause of action because neither they nor Huynh tendered the full amount due on the loan. The trial court sustained the demurrer without leave to amend, holding that appellants' quiet title action is based on a claim that the foreclosure was wrongful, and therefore, appellants must plead tender before seeking to set aside the foreclosure sale.[2] An order of dismissal was entered by the court on May 4, 2010. This timely appeal followed.

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[2] Respondent also demurred on the ground that appellants could not sufficiently plead a quite title action because the July 2008 trustee sale terminated Huynh's interest in the property, and therefore, the July 2009 quitclaim deed did not transfer any interest in the property to appellants. The court rejected this argument, finding that appellants sufficiently pleaded a quiet title action by generally alleging they were the owner in possession of the property and that respondent claims an adverse interest without right

DISCUSSION

I

Respondent argues this appeal is premature because the trial court entered an order of dismissal but did not enter a formal judgment. Generally, an appeal may be taken from a judgment (Code Civ. Proc., § 904.1), which is a "final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) An order of dismissal is a judgment for all intents and purposes, and therefore, is generally appealable. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 197.) We treat the trial court's order of dismissal as an appealable order and refer to it as such throughout our opinion.

II

When a demurrer is sustained by a trial court on the basis of a failure to state a cause of action, we review the allegations de novo to determine whether the complaint states facts sufficient to constitute a cause of action under any legal theory. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) In doing so, we give the complaint a reasonable interpretation, reading it as a whole and viewing its parts in context. (*Balikov v. Southern Cal. Gas Co.* (2001) 94 Cal.App.4th 816, 819.) Relevant matters that were properly the subject of judicial notice may be treated as having been pled. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.)[3] If no liability exists as a matter of law, the order sustaining the demurrer is affirmed. (*Ibid.*)

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because it does not have any legal or equitable interest in the property. Respondent presents the same argument on appeal. We agree with the trial court's ruling. (See *Gray v. Walker* (1910) 157 Cal. 381, 384-385 [complaint alleging plaintiff is owner and in possession of certain land, that defendant claims an interest therein, adverse to plaintiff, and that such claim is without right, contains every element of complaint to quiet title]; see also *Kroeker v. Hurlbert* (1940) 38 Cal.App.2d 261, 265 [defendant's claim is sufficiently alleged in general terms without specifying the nature of the claim].)

[3] Respondent asked the trial court to take judicial notice of several documents including the deed of trust, the substitution of trustee, the notice of default, the notice of sale, the assignment of the deed of trust to respondent, and the trustee's deed upon sale. Both parties included the documents in their respective appendixes and cite them in their

Where, as here, a demurrer is sustained without leave to amend, we also review the decision to deny leave to amend under the abuse of discretion standard, even when no request to amend the pleading was made. (Code Civ. Proc., § 472c, subd. (a); see also *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) In doing so, we decide whether there is a reasonable possibility that the defect can be cured by amendment. The burden is on the plaintiff to demonstrate that reasonable possibility. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Here, appellants sought to quiet title against respondents and set aside the trustee sale at which respondents purchased the property. In order to state a viable cause of action for quiet title, a complaint must include: "(a) A description of the property that is the subject of the action. . . . [¶] (b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. . . . [¶] (c) The adverse claims to the title of the plaintiff against which a determination is sought. [¶] (d) The date as of which the determination is sought. . . . [¶] (e) A prayer for the determination of the title of the plaintiff against the adverse claims." (Code Civ. Proc., § 761.020.) To bring an action to quiet title a plaintiff must allege he or she has paid any debt owed on the property. (*Shimpones v. Stickney* (1934) 219 Cal. 637, 649 ["[A] mortgagor cannot quiet his title against the mortgagee without paying the debt secured."].)

The power of sale in a deed of trust allows a beneficiary recourse to the security without the necessity of a judicial action. (See *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1249.) 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. (See *Lo v. Jensen* (2001) 88 Cal.App.4th 1093, 1097-1098; see also *Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 700 ["'In order to challenge the sale successfully there must be evidence of a failure to comply with the procedural requirements for the foreclosure sale

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argument. We assume that the documents were properly before the trial court and we consider them here.

that caused prejudice to the person attacking the sale.'"].) Setting aside a nonjudicial foreclosure sale is an equitable remedy. (*Lo v. Jensen*, *supra*, 88 Cal.App.4th at p. 1098 ["A debtor may apply to a court of equity to set aside a trust deed foreclosure on allegations of unfairness or irregularity that, coupled with the inadequacy of price obtained at the sale, mean that it is appropriate to invalidate the sale."].) A court will not grant equitable relief to a plaintiff unless the plaintiff does equity. (See *Arnolds Management Corp. v. Eischen* (1984) 158 Cal.App.3d 575, 578-579; see also 13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 6, pp. 286-287.) Thus, "[i]t is settled that an action to set aside a trustee's sale for irregularities in sale notice or procedure should be accompanied by an offer to pay the full amount of the debt for which the property was security." (*Arnolds Management Corp. v. Eischen*, *supra*, 158 Cal.App.3d at p. 578; see also *FPCI RE-HAB 01 v. E & G Investments, Ltd.* (1989) 207 Cal.App.3d 1018, 1022 [rationale behind tender rule is that irregularities in foreclosure sale do not damage plaintiff where plaintiff could not redeem property had sale procedures been proper].)

However, a tender may not be required where it would be inequitable to do so. (See *Onofrio v. Rice* (1997) 55 Cal.App.4th 413, 424; see also *Dimock v. Emerald Properties* (2000) 81 Cal.App.4th 868, 876-878 [when new trustee has been substituted, subsequent sale by former trustee is void, not merely voidable, and no tender needed to set aside sale].) Specifically, "'if the [plaintiff's] action attacks the validity of the underlying debt, a tender is not required since it would constitute an affirmation of the debt.'" (*Onofrio v. Rice*, *supra*, 55 Cal.App.4th at p. 424.)

Appellants contend they are not challenging irregularities in the foreclosure proceeding. Rather, they argue that respondent is not the holder of the underlying promissory note and therefore cannot invoke the tender rule against them. In their complaint, appellants alleged that New Century remains in possession of the promissory note and that appellants owe no obligation to respondent. On appeal, appellants contend that whether respondent holds the promissory note is a factual dispute, and sustaining respondent's demurrer presupposes that respondent has authority to enforce the loan

obligation. They assert that while MERS had the authority to transfer its beneficial interest under the deed of trust, there is no evidence that MERS, which was acting as a nominee of New Century, held the promissory note and was authorized to assign the note itself to respondent.

The role of MERS is central to the issues in this appeal. "'MERS is a private corporation that administers the MERS System, a national electronic registry that tracks the transfer of ownership interests and servicing rights in mortgage loans. Through the MERS System, MERS becomes the mortgagee of record for participating members through assignment of the members' interests to MERS. MERS is listed as the grantee in the official records maintained at county register of deeds offices. The lenders retain the promissory notes, as well as the servicing rights to the mortgages. The lenders can then sell these interests to investors without having to record the transaction in the public record. MERS is compensated for its services through fees charged to participating MERS members.'" (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1151 (*Gomes v. Countrywide*), quoting *Mortgage Electronic Registration Systems, Inc. v. Nebraska Dept. of Banking & Finance* (Neb. 2005) 704 N.W.2d 784, 785.)

Appellants cite two federal cases for the proposition that MERS, as the nominee of the lender under a deed of trust, does not possess the underlying promissory note and cannot assign it, absent evidence of an explicit authorization from the original lender. (See *Saxon Mortgage Services, Inc. v. Hillery* (N.D. Cal. Dec. 9, 2008, No. C-08-4357) 2008 U.S. Dist. LEXIS 100056; see also *In re Agard* (Bankr. E.D. N.Y. Feb. 10, 2011, No. 10-77338-reg) 2011 Bankr. LEXIS 488.) Not all courts agree on this issue and appellants do not distinguish nor address other cases that have upheld MERS's ability to assign a mortgage. (See *US Bank, N.A. v. Flynn* (N.Y.Sup. 2010) 897 N.Y.S.2d 855, 859 [assignee of MERS has standing to initiate foreclosure proceeding because where "an entity such as MERS is identified in the mortgage indenture as the nominee of the lender and as the mortgagee of record and the mortgage indenture confers upon such nominee all of the powers of such lender, its successors and assigns, a written assignment of the note and mortgage by MERS, in its capacity as nominee, confers good title to the

assignee and is not defective for lack of an ownership interest in the note at the time of the assignment"]; see also *Crum v. LaSalle Bank, N.A.* (Ala. Civ. App. Sep. 18, 2009, No. 2080110) 2009 Ala. Civ. App. LEXIS 491 at pp. *6-7.) We are not bound by federal district and bankruptcy court decisions, and the cases cited by appellants are in direct conflict with persuasive California case law.

In *Gomes v. Countrywide*, *supra*, 192 Cal.App.4th 1149, plaintiff Gomes obtained a loan from KB Home Mortgage Company (KB Home) to finance a real estate purchase. He executed a promissory note secured by a deed of trust naming KB Home as the lender and MERS as KB Home's nominee and beneficiary under the deed of trust. (*Gomes v. Countrywide, supra*, 192 Cal.App.4th at p. 1151.) The deed of trust contained a provision granting MERS the power to foreclose and sell the property in the event of a default. (*Ibid.*) Gomes defaulted on his payments and was mailed a notice of default by ReconTrust, which identified itself as an agent for MERS. Attached was a declaration signed by Countrywide Home Loans, acting as the loan servicer. (*Ibid.*) Gomes filed suit against Countrywide Home Loans, ReconTrust and MERS for wrongful initiation of foreclosure, alleging MERS did not have authority to initiate the foreclosure because it did not possess the note and was not authorized by its current owner to proceed with foreclosure. (*Id.* at p. 1152.) Defendants demurred, arguing, among other things, that Gomes was required to plead tender to maintain a cause of action for wrongful foreclosure and that the terms of the deed of trust authorized MERS to initiate a foreclosure proceeding. The trial court sustained the demurrer without leave to amend. (*Ibid.*)

On appeal, the court affirmed the order, finding that Gomes could not seek judicial intervention in a nonjudicial foreclosure before the foreclosure has been completed. (*Gomes v. Countrywide*, *supra*, 192 Cal.App.4th at p. 1154.) Nonetheless, the appellate court reached the merits of Gomes's claim as an independent ground for affirming the order sustaining the demurrer. The court rejected Gomes's argument that MERS lacked authority to initiate the foreclosure procedure because the deed of trust explicitly provided MERS with the authority to do so. The court found that the "deed of trust

contains no suggestion that the lender or its successors and assigns must provide Gomes with assurances that MERS is authorized to proceed with a foreclosure at the time it is initiated." (*Id.* at p. 1157.) Thus, Gomes acknowledged MERS's authority to foreclose by entering into the deed of trust. (*Ibid.*)

Just as in *Gomes v. Countrywide*, the deed of trust in this case specifically states: "Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument."

Appellants concede that MERS had the authority to assign its beneficial interest to respondent.[4] Accordingly, respondent had the same authority to initiate foreclosure proceedings. And while *Gomes v. Countrywide* did not address the tender issue, it does

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[4] Appellants explicitly conceded this point in their reply brief on appeal. At oral argument, appellants offered *In re Walker* (Bankr. E.D. Cal. May 20, 2010, No. 10-21656-E-11) 2010 Bankr. LEXIS 3781, to assert that MERS did not have authority to assign the mortgage without holding the promissory note. In that case, Walker obtained a loan from Bayrock Mortgage Corporation (Bayrock) to finance a real estate purchase. He executed a promissory note secured by a deed of trust naming Bayrock as the lender and MERS as Bayrock's nominee. MERS then assigned its interest to Citibank. (*Id.* at p. *3.) During a bankruptcy proceeding, Citibank asserted a claim against Walker for the outstanding mortgage. Walker objected and the bankruptcy court sustained the objection, finding that Citibank had no interest in the mortgage because MERS, as a mere nominee without the underlying note, had no authority to assign the note to Citibank. (*Id.* at p. *6.) Citing decisions from other jurisdictions, the court also held MERS could not foreclose on the property because it did not own the underlying note, and therefore had no interest in the mortgage to assign. (*Id.* at pp. *5-6; see also *Landmark National Bank v. Kesler* (Kan. 2009) 216 P.3d 158, 167 [in a mortgage foreclosure action, trial court did not abuse discretion by denying MERS motion to set aside default judgment because MERS was not a necessary party since the deed of trust did not give MERS any cognizable interest in the property].) Even if we interpret *In re Walker* to mean that MERS had no beneficial interest to assign to respondent, this argument was explicitly rejected in *Gomes v. Countrywide*, *supra*, 192 Cal.App.4th at pages 1155-1157, with which we agree.

not follow that a beneficiary may initiate nonjudicial foreclosure proceedings under a deed of trust without the original promissory note, but cannot seek tender from a defaulting borrower attempting to set aside the foreclosure. Although California courts have not resolved this issue (see Miller & Starr, Cal. Real Estate (3d ed. 2010) Deeds of Trust and Mortgages, § 10:39:10), several federal district courts in this state have upheld a beneficiary's authority to initiate foreclosure proceedings and invoke the tender rule against a defaulting borrower, even when the beneficiary is not the holder of the original promissory note. Those courts have noted that "California law 'does not require possession of the note as a precondition to [nonjudicial] foreclosure under a Deed of Trust.'" (*Jensen v. Quality Loan Service Corp.* (E.D. Cal. 2010) 702 F.Supp.2d 1183, 1189; see also *Odinma v. Aurora Loan Services* (N.D. Cal. Mar. 23, 2010, No. C-09-4674 EDL) 2010 U.S. Dist. LEXIS 28347 at p. *13; see also *Morgera v. Countrywide Home Loans, Inc.* (E.D. Cal. Jan. 11, 2010, No. 2:09-cv-01476-MCE-GGH) 2010 U.S. Dist. LEXIS 2037 at p. *21 [MERS, as nominee of lender, has authority to initiate nonjudicial foreclosure without underlying promissory note].) Moreover, in cases involving an assignment of a deed of trust from MERS to a third party, courts have invoked the tender rule despite arguments that MERS did not have the authority to assign its interest under the deed of trust without the promissory note. (See *Lai v. Quality Loan Service Corp.* (C.D. Cal. Aug. 26, 2010, No. CV 10-2308 PSG) 2010 U.S. Dist. LEXIS 97121.) Appellants offer no authority, state or federal, to support the legal loophole they claim for defaulting borrowers and their successors.

Appellants also argue that respondent was not authorized to substitute Quality as the trustee prior to becoming the beneficiary under the deed of trust. Quality initiated the foreclosure proceedings when it was not the trustee and therefore had no legal right to do so. Under a deed of trust, the trustee may be substituted by a "substitution executed and acknowledged by: (A) all of the beneficiaries under the trust deed, or their successors in interest . . . ; or (B) the holders of more than 50 percent of the record beneficial interest of a series of notes secured by the same real property or of undivided interests in a note secured by real property equivalent to a series transaction, exclusive of any notes or

interests of a licensed real estate broker that is the issuer or servicer of the notes or interests or of any affiliate of that licensed real estate broker." (Civ. Code, § 2934a, subd. (a)(1).)

We agree with appellants that respondent did not have the authority to execute a substitution of trustee until MERS assigned the deed of trust to it. Thus, Quality's August 3, 2007, notice of default was defective. Nonetheless, Huynh had more than three months to satisfy his obligation before Quality executed a notice of sale. The substitution of trustee was effective when respondent became the beneficiary under the deed of trust and when the substitution was recorded on November 9, 2007. (Civ. Code, § 2934a, subd. (a)(4) ["From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority, and title granted and delegated to the trustee named in the deed of trust."].) Thus, the notice of sale was valid.[5] Quality then completed the foreclosure in July 2008, long after its substitution as trustee took effect. This situation is distinct from other cases that have voided a nonjudicial foreclosure sale when a party other than the trustee initiated the proceeding and *completed* the sale without having been substituted in as the trustee. (See *Pro Value Properties, Inc. v. Quality Loan Service Corp.* (2009) 170 Cal.App.4th 579, 583; see also *Dimock v.*

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[5] We note that the substitution of trustee was not recorded until November 9, 2007, after the notice of sale was executed and delivered, but on the same day the notice of sale was recorded.

Civil Code section 2934a, subdivision (c), provides: "If the substitution is effected after a notice of default has been recorded but prior to the recording of the notice of sale, the beneficiary or beneficiaries or their authorized agents shall cause a copy of the substitution to be mailed, prior to, or concurrently with, the recording thereof, in the manner provided in Section 2924b, to the trustee then of record and to all persons to whom a copy of the notice of default would be required to be mailed by the provisions of Section 2924b. An affidavit shall be attached to the substitution that notice has been given to those persons and in the manner required by this subdivision." Here, notice of the substitution of trustee was mailed to Huynh and the trustee of record on November 7, 2007. An affidavit was attached to the substitution on the same day. Thus, we conclude the substitution was recorded and notice was delivered in accordance with statutory requirements.

Emerald Properties, *supra*, 81 Cal.App.4th at pp. 876-878 [foreclosure sale void where original trustee completed foreclosure sale after being replaced by new trustee].) Appellants offer no authority for the proposition that the defective nature of the initial notice of default corrupted all subsequent steps in the nonjudicial foreclosure proceeding such that the sale was void, not merely voidable.

Appellants also argue that they need not do equity in order to set aside the foreclosure sale because they were not the original borrowers of the loan, and thus, are not the party at fault for the outstanding loan. We disagree. Appellants stand in the shoes of Huynh by the quitclaim deed, the only basis for their having any standing at all. (See *City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 239 [quitclaim deed passes whatever interest or right grantor possesses, legal or equitable].) Allowing them to circumvent the tender rule would render a windfall to them and leave a valid loan obligation unsatisfied.

III

Finally, we turn to whether the trial court abused its discretion in sustaining respondent's demurrer without leave to amend. It is appellants' burden to establish a reasonable possibility that the defect in their complaint can be cured by amendment. (*Blank v. Kirwan*, *supra*, 39 Cal.3d. at p. 318.) They are required to "'"show in what manner [they] can amend [their] complaint and how that amendment will change the legal effect of [their] pleading. . . ." [Citation.]'" (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 8.)

The trial court found appellants' complaint defective because it did not plead a tender. Appellants have not and do not argue that they offered tender in either of their appeal briefs. Rather, they contend that they alleged a previous tender offer that was rejected by respondent. They allege in their complaint that they made an offer to purchase the property from respondent, but were rejected unless they agreed to vacate the property for 10 days, purchase it for approximately $800,000, and then move back onto the property. Appellants argue that their proposal to purchase the property was effectively an offer to tender the amount due on the loan, and because respondent rejected

the proposal, it should be estopped from invoking the tender rule now. The trial court did not address this allegation in its adopted tentative opinion, and instead concluded that no allegation of tender was made.

A tender is an offer of performance made with the intent to extinguish the obligation. (Civ. Code, § 1485.) It must be unconditional (Civ. Code, § 1494) and offer full performance to be valid (Civ. Code, § 1486). Civil Code section 1512 provides: "If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties."

Appellants' offer to buy the property from respondent does not constitute tender because there is no allegation that it was done with the intent to extinguish the obligation. Moreover, the record shows that the amount remaining on the loan at the time of the trustee sale was over $600,000, well above the $400,000 respondent paid to purchase the property at the trustee sale. Appellants did not plead how much they offered to purchase the property, thus providing no indication that they offered full performance. Finally, while there is no evidence that respondent's $800,000 asking price represented the value of the loan at the time appellants offered to purchase the property, the burden is on appellants to plead facts showing the price was excessive. Appellants have not addressed any of these issues on appeal. Therefore, because appellants have "made no attempt to indicate how the complaint may have been amended to state a cause of action" they have "failed to establish that the trial court abused its discretion." (*Palm Springs Tennis Club v. Rangel*, *supra*, 73 Cal.App.4th at p. 8.)

DISPOSITION

The order of dismissal is affirmed. Respondents to have their costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.