DIEM T. NGUYEN, Plaintiff and Appellant,
v.
NATIONSTAR MORTGAGE LLC, et al., Defendants and Respondents.

No. G046818.

Court of Appeals of California, Fourth District, Division Three.

Filed February 22, 2018.

Appeal from a judgment of the Superior Court of Orange County, Super. Ct. No. 30-2010-00387297, William M. Monroe, Judge. Affirmed.

Diem T. Nguyen, in pro. per., for Appellant Diem T. Nguyen.

McCarthy & Holthus, Melissa Robbins Coutts, for Defendants and Respondents, Nationstar Mortgage LLC, Federal National Mortgage Association, Mortgage Electronic Registration Systems, Inc., and Quality Loan Service Corporation.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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OPINION

IKOLA, J.

Plaintiff and appellant Diem T. Nguyen has a rich litigation history.[1] This appeal represents her latest attempt to challenge a foreclosure. The original lender on plaintiff's loan was defendant GMAC Mortgage Corporation dba Ditech.com (GMAC). The loan was assigned to defendant Nationstar Mortgage LLC (Nationstar). Plaintiff sued GMAC and Nationstar, and defendants Federal National Mortgage Association (Fannie Mae), Mortgage Electronic Registration Systems, Inc. (MERS), and Quality Loan Service Corporation (Quality). After four attempts to plead a valid cause of action, the trial court sustained without leave to amend two demurrers to plaintiff's

third amended complaint (TAC) — one filed by GMAC and another filed by Nationstar, Fannie Mae, MERS, and Quality.

Plaintiff appeals from the court's subsequent judgment of dismissal[2] as to all defendants. Following GMAC's bankruptcy, we dismissed plaintiff's appeal as to GMAC. As to Nationstar, Fannie Mae, MERS, and Quality, the court did not err. Accordingly, we affirm the judgment of dismissal.

FACTS

The underlying facts are taken from the TAC and attached exhibits. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 [on demurrer, "courts must assume the truth of the complaint's properly pleaded or implied factual allegations"].)

In July 2006, plaintiff refinanced her Santa Ana condominium. She executed a promissory note for $296,000 in favor of GMAC. The note was secured by a deed of trust naming GMAC as lender; Executive Trustee Services, Inc. as trustee; and MERS[3] as "a nominee for Lender and Lender's successors and assigns," as well as the beneficiary.

On May 6, 2010, Quality, "as agent for beneficiary," recorded a notice of default and election to sell under deed of trust (NOD). According to the NOD, plaintiff owed $25,532.67 in past due payments, costs, and expenses. The NOD stated, "To find out the amount you must pay, or arrange for payment to stop the foreclosure," plaintiff was to contact Nationstar, care of Quality, at a San Diego address and phone number. **The NOD had attached to it a beneficiary declaration of compliance with Civil Code section 2923.5 listing the beneficiary and loan servicer as Nationstar.[4] The declaration is dated February 2010. According to the declaration, the beneficiary or its authorized agent exercised due diligence to contact plaintiff about the default in her payments in compliance with section 2923.5, subdivision (g)(3), by sending plaintiff a letter in November 2009, by certified mail, return receipt requested.[5]**

It was not until one week later, on May 13, 2010, that MERS, as nominee for GMAC, executed an assignment of deed of trust assigning the DOT from GMAC to Nationstar (first assignment). The first assignment was recorded in June 2010. And it was not until July 2010 that Nationstar, by Quality, executed a substitution of trustee substituting Quality as trustee under the DOT. The substitution of trustee was recorded on August 3, 2010.[6]

Meanwhile, in late May 2010, plaintiff filed a complaint in the Orange County Superior Court entitled *Nguyen v. Nationstar Mortgage, et al.,* case No. 30-2010-00376811. She alleged causes of action for mortgage fraud, predatory lending, violation of truth in lending act, negligence, "punitive," and violation of real estate settlement and procedures act against Nationstar, GMAC, and Quality. Nationstar removed the case to federal court in July 2010.

Plaintiff then initiated the instant case in July 2010 by filing a complaint for fraud, negligence, and "punitive" against Nationstar and Fannie Mae. Nationstar and Fannie Mae successfully demurred to the complaint. The trial court stayed the instant case due to the federal case.

The notice of trustee's sale was recorded on August 9, 2010 (NOTS). The NOTS was executed by Quality and stated the property would be sold on August 30, 2010. By this time, the unpaid balance on plaintiff's note was $312,705.64.

On August 12, 2010, Nationstar (by Quality) executed an assignment of deed of trust assigning the beneficial interest under the DOT from Nationstar to Fannie Mae (second assignment). On September 10, 2010, the second assignment was recorded, and Quality, as trustee, conveyed the property to Fannie Mae by recording a trustee's deed upon sale.

Plaintiff filed a second amended complaint (SAC) in March 2011. Plaintiff named as additional defendants Quality, Summergreen Homeowners Association, Huntington West Properties, and GMAC.[7] She alleged fourteen causes of action. Nationstar and Fannie Mae successfully demurred to the SAC. The court sustained the demurrer with 30 days leave to amend as to the first (fraud) and fifth (unfair and deceptive business act practices) causes of action only, refusing plaintiff leave to amend on the second through fourth and sixth through fourteenth causes of action.[8] The court noted "[t]he [SAC] is 47 pages of mostly unintelligible rambling."

Plaintiff filed her TAC in June 2011, alleging eighteen causes of action and naming MERS as an additional defendant. The TAC is verified and spans 55 single-spaced pages while attaching approximately 100 pages in exhibits labeled X (sometimes referred to as exhibit A) through T.[9]

Nationstar, Fannie Mae, MERS, and Quality demurred to the TAC. Concurrently, they filed a request for judicial notice attaching the DOT, first

assignment, NOD, NOTS, trustee's deed upon sale, and several pleadings from the federal case.

In September 2011, the court sustained the demurrer to plaintiff's TAC without leave to amend. As to plaintiff's sixth cause of action for wrongful foreclosure, the court concluded, inter alia, "[t]o the extent that this cause of action relies on irregularities in the non-judicial foreclosure process, there must be an allegation of a tender."[10]

In November 2011, plaintiff filed a brief challenging the trial court's jurisdiction. The court determined plaintiff failed to cite any authority in support of her new position that it lacked jurisdiction. Plaintiff filed a petition for writ of mandate challenging the court's jurisdiction finding, and we summarily denied the petition in January 2012. The trial court finally entered an "order dismissing the entire action" in February 2012 after plaintiff submitted the order for the court's signature. In April 2012 plaintiff appealed.

Plaintiff's opening brief in the appeal was filed in June 2012. In July 2012, we stayed the appeal because of GMAC's pending bankruptcy proceedings. We lifted the stay and dismissed GMAC in January 2017.

DISCUSSION

Standard of Review

We review a trial court's order sustaining a demurrer de novo and apply the abuse of discretion standard in reviewing the court's denial of leave to amend the complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Alexander v. Exxon Mobil* (2013) 219 Cal.App.4th 1236, 1250-1252.) Where the court sustains a demurrer without leave to amend, we decide if "there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] . . . [Citation.] The plaintiff has the burden of proving that an amendment would cure the defect." (*Schifando v. City of Los Angeles, supra,* 31 Cal.4th at p. 1081.) "In conducting our de novo review, we `must "give[ ] the complaint a reasonable interpretation, and treat[ ] the demurrer as admitting all material facts properly pleaded." [Citation.] Because only factual allegations are considered on demurrer, we must disregard any "contentions, deductions or conclusions of fact or law alleged. . . ."'" (*WA Southwest 2, LLC v. First American Title Ins. Co.* (2015) 240 Cal.App.4th 148, 151.)

Plaintiff's TAC

In her TAC, plaintiff alleged causes of action for (1) breach of written contract — the original deed of trust; (2) breach of anticipatory contract; (3) breach of oral contract; (4) breach of HAMP[11] contract; (5) breach of the third-party beneficiary contract; (6) wrongful foreclosure; (7) quiet title; (8) slander of title; (9) cancellation of instruments; (10) promissory estoppel; (11) negligence; (12) negligent misrepresentation; (13) breach of the covenant of good faith and fair dealing; (14) fraud; (15) violation of the Rosenthal Fair Debt Collection Practices Act; (16) unfair practices under California Business & Professions Code section 17200, et seq.; (17) declaratory relief; and (18) conspiracy to obstruct justice.

Despite the litany of causes of action alleged in the TAC, Plaintiff asserts in her opening brief on appeal that the gravamen of the TAC is the wrongful foreclosure of her property following an improper denial of a HAMP modification of her loan. Plaintiff contends defendants "us[ed] defective foreclosing documents," the documents are "void ab initio," and respondents have no "standing to demand tender."[12]

To the best of our ability, we have endeavored to understand plaintiff's disjointed pleading and briefing in this court, even though plaintiff largely fails to cite to the record on appeal as required (*Air Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, 928; Cal. Rules of Court, rule 8.204(a)(1)(C); *Sharabianlou v. Karp* (2010) 181 Cal.App.4th 1133, 1149 **["we will not scour the record on our own in search of supporting evidence"]), and fails to support her conclusions with legal authority** (Cal. Rules of Court, rule 8.204(a)(1)(B); *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785).[13] We deem plaintiff's argument on appeal to be solely a challenge to the court's sustaining without leave to amend plaintiff's sixth cause of action for wrongful foreclosure against Nationstar, Fannie Mae, MERS, and Quality. As to the sufficiency of the other pleaded causes of action, we deem the issues waived, because plaintiff has not adequately briefed them. **"We are not required to examine undeveloped claims or to supply arguments for the litigants."** (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52.) This is true even though plaintiff is self-represented. (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 524 [**plaintiffs who appeared on appeal without counsel were not entitled to "special treatment**"]; *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639 [**litigants**

representing themselves in pro. per. are held to same standards as lawyers].)

General Overview of Nonjudicial Foreclosure

"We begin with a general overview of the nonjudicial foreclosure process. A nonjudicial foreclosure sale is a `quick, inexpensive[,] and efficient remedy against a defaulting debtor/trustor.' [Citation.] To preserve this remedy for beneficiaries while protecting the rights of borrowers, `sections 2924 through 2924k provide a comprehensive framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust.' [Citation.] Under a deed of trust, the trustee holds title and has the authority to sell the property in the event of a default on the mortgage. [Citation.] To initiate a foreclosure, `[t]he trustee, mortgagee, or beneficiary, or any of their authorized agents' must first record a notice of default. (§ 2924, subd. (a)(1).) The notice of default must identify the deed of trust `by stating the name or names of the trustor or trustors' and provide a `statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred' and a `statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy [the] obligation . . . that is in default.' [Citation.] After three months, a notice of sale must then be published, posted, mailed, and recorded in accordance with the time limits prescribed by the statute. [Citations.] [¶] `"The purposes of this comprehensive scheme are threefold: (1) to provide the creditor/beneficiary with a quick, inexpensive[,] and efficient remedy against a defaulting debtor/trustor; (2) to protect the debtor/trustor from wrongful loss of the property; and (3) to ensure that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser."'" (*Brown v. Deutsche Bank National Trust Co.* (2016) 247 Cal.App.4th 275, 280.)

A nonjudicial foreclosure is "presumed to have been conducted regularly, and the burden of proof rests with the party attempting to rebut this presumption." (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 270 [**presumption that nonjudicial foreclosure sale was conducted regularly and fairly may be rebutted only by substantial evidence of prejudicial procedural irregularity**].)

Plaintiff Has Not Stated a Cause of Action for Wrongful Foreclosure

In her sixth cause of action for wrongful foreclosure, plaintiff begins by incorporating by reference all paragraphs in the preceding 30 single-spaced pages. We will not outline all her repetitive allegations. In summary, as related to this appeal, the TAC alleges the action revolves around the DOT in that "the conducts and practices of Ditech [i.e., GMAC], Nationstar, Quality, MERS, and FANNIE MAE were contrary to this original contract," and, as such, plaintiff alleges the foreclosure was "vicious, malicious, wrongful, and fraudulent."

Plaintiff then alleges in conclusory fashion several purported facts, including: Defendants breached terms and conditions in the DOT; defendants lacked standing, jurisdiction and/or authority to foreclose on the property; and defendants were prohibited from invoking the power of sale provision in the DOT. She then references several provisions of the DOT (which spans 18 single-spaced pages with small font) without specifying paragraphs where the provisions are to be found. She alleges the loan was sold or transferred to investors, none of the defendants owned the "loans or corresponding notes" at the time of the foreclosure sale, and the note had already been paid in full. She alleges defendants were prohibited from invoking the power of sale provision in the DOT because the property was no longer security for the debt allegedly owed to defendants; MERS caused a wrongful fraudulent foreclosure by accepting and recording an invalid and incomplete assignment of deed of trust to Nationstar; the assignment was invalid and void ab initio because Nationstar had no standing, jurisdiction or authority to act as beneficiary and invoke the power of sale; the declaration of compliance with section 2923.5 was invalid, false, and fraudulent; Quality was an unknown stranger to the DOT because it was not lawfully substituted as trustee, and therefore the following documents created by Quality were invalid and void ab initio: NOD, NOTS, and the publication of the NOTS in the newspaper; MERS allowed Nationstar and Quality, who were unknown strangers to the DOT, to foreclose; Nationstar and Fannie Mae breached a HAMP modification agreement in which plaintiff was a third party beneficiary; and the HAMP modification did not allow Nationstar and Fannie Mae to invoke the "power of sales upon repudiating the contract on their own accord." Plaintiff seeks $1,000,000 in damages.

Although we must accept the truth of plaintiff's factual allegations when reviewing the ruling on a demurrer, **we are not required to accept the truth of her legal conclusions**. (See *Yvanova, supra,* 62 Cal.4th at p. 924.)

"The basic elements of a tort cause of action for wrongful foreclosure track the elements of an equitable cause of action to set aside a foreclosure sale. They are: `(1) 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; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.'" (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 408; see *Yvanova, supra,* 62 Cal.4th at p. 929.)

PLAINTIFF WAS IN DEFAULT ON HER HOME LOAN AND HAS NO SUBSTANTIVE DEFENSE TO FORECLOSURE, SUCH AS THE NON-EXISTENCE OF A DEFAULT. Instead, plaintiff complains the foreclosing documents are invalid and void ab initio. According to the documents attached to the TAC, the chain of events was as follows. Plaintiff signed the DOT in favor of GMAC in July 2006. In November 2009, Nationstar sent plaintiff a letter her loan was in default. In February 2010, Nationstar executed a declaration stating it had contacted plaintiff by sending her a letter concerning default. In May 2010, Quality, on behalf of Nationstar, recorded the NOD. The first assignment (GMAC to Nationstar) occurred one week later. Quality was substituted as trustee in July 2010. The substitution of Quality as trustee was recorded on August 3, 2010, and Quality recorded the NOTS on August 9, 2010. Finally, the second assignment (Nationstar to Fannie Mae) was recorded with the trustee's deed upon sale in September 2010. Our review of these documents reveals the only potential irregularity appears in the *timing,* not the validity, of the substitution of Quality as trustee under the DOT in place of Executive Trustee Services. Plaintiff's attack on the NOD, NOTS, and publication of sale appears to hinge on the validity of Quality's substitution as trustee. Plaintiff's other arguments attack the foreclosure documents on factual grounds without any cogent legal analysis. Hence, our conclusion the substitution was valid precludes plaintiff's case from proceeding.

Under a deed of trust, the trustee holds title and has the authority to sell the property in the event of a default on the mortgage. (*Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 10 (*Ram*).) **"By statute the Legislature has permitted the beneficiary of a deed of trust to substitute, at any time, a new trustee for the existing trustee."** (*Dimock v. Emerald Properties* (2000) 81 Cal.App.4th 868, 871.) **Section 2934a provides a trustee under a deed of trust may be substituted by recording an executed substitution of trustee in the county in which the property is located. (§ 2934a, subd. (a)(1).)** Here Nationstar, as beneficiary (after it had been assigned the DOT from GMAC), executed the substitution naming Quality as the new trustee.

Plaintiff argues the substitution is invalid, because the Orange County Recorder's Office "does not have any records that Quality was ever properly substituted in as the Trustee." The argument is false. We have taken judicial notice of the substitution of trustee as recorded in the official records of Orange County. (See fn. 6, *supra.*)

Section 2934a states, "A trustee named in a recorded substitution of trustee shall be deemed to be authorized to act as the trustee under the . . . deed of trust for all purposes *from the date the substitution is executed.* . . ." (*Id.,* subd. (d), italics added.) The substitution was executed in July 2010 and recorded on August 3, 2010, *before* the notice of trustee's sale was recorded on August 9, 2010. **A NEW NOTICE OF TRUSTEE'S SALE IS REQUIRED ONLY WHERE THE SUBSTITUTION OF TRUSTEE OCCURS *AFTER* AN INITIAL NOTICE OF SALE.** (See *Id.,* subd. (e) **["Notwithstanding any provision of this section or any provision in any deed of trust, unless a new notice of sale containing the name, street address, and telephone number of the substituted trustee is given pursuant to Section 2924f *after the execution of the substitution,* any sale conducted by the substituted trustee shall be void"** (Italics added).)

That the substitution of Quality as trustee was executed after the NOD does not make the subsequent foreclosure sale illegal or fraudulent. Our conclusion is consistent with *Ram, supra,* 234 Cal.App.4th 1, a case neither plaintiff nor defendants discuss. In *Ram,* the plaintiffs appealed from a dismissal following the sustaining of OneWest's demurrer to their complaint alleging several causes of action including wrongful foreclosure. (*Ram, supra,* 234 Cal.App.4th at p. 6.) The notice of default was executed and recorded by Aztec Foreclosure Corporation. (*Id.* at p. 7.) However,

"OneWest did not formally execute a substitution naming Aztec as the trustee until . . . several weeks after it was identified as trustee on the notice of default." (*Id.* at p. 8.) The *Ram* court's lengthy explanation is instructive.

"The first element [of a wrongful foreclosure cause of action]—wrongfulness—can be satisfied by a variety of procedural defects, such as noncompliance with the requirements for notice or the trustee's lack of authority to foreclose. [Citation.] The second element—prejudice—is met where an irregularity in the proceeding adversely affects the trustors' ability to protect their interest in the property. `Prejudice,' however, `is not presumed from "mere irregularities" in the process.' [Citation.] The third element—tender—requires the trustor to make `an offer to pay the full amount of the debt for which the property was security.' [Citation.] . . . . [¶] But trustors attacking a *void* deed are `not required to meet any of the burdens imposed when, as a matter of equity, a party wishes to set aside a voidable deed.' [Citation.] A sale is not rendered void merely because of minor or technical defects. [Citation.] **A sale is rendered void, though, when the defects are substantial, such as when there has been a failure to give notice of sale to the trustor or to specify the correct default in the notice of default**. [Citations]. **Similarly, a sale is rendered void when the foreclosure sale is conducted by an entity that lacks authority to do so.** [Citations.] [¶] Former Chief Justice Malcolm Lucas wrestled with the somewhat elusive distinction between `void' and `voidable' nonjudicial foreclosure sales in *Little v. CFS Service Corp.* [(1987)] 188 Cal.App.3d 1354, where he explained: `"The word `void,' in its strictest sense, means that which has no force and effect, is without legal efficacy, is incapable of being enforced by law, or has no legal or binding force, but frequently the word is used and construed as having the more liberal meaning of `voidable.'" [Citation.] "Voidable" is defined as "[t]hat which may be avoided, or declared void; not absolutely void, or void in itself. . . ."' [Citation.] [¶] In the end, the importance of any distinction between a `void' or `voidable' nonjudicial foreclosure sale is simply whether the borrower, who is in default, must allege and prove a prerequisite tender of the amount due under the deed of trust and otherwise to show prejudice resulting from the defect, omission, or failure, before the sale will be set aside. **In deciding whether to require a showing of tender and prejudice, courts appear to focus on the nature and severity of the defect, omission or failure and its practical effect on the foreclosure process.**"[14] (*Ram, supra,* 234 Cal.App.4th at pp. 11-12.)

In *Ram, supra,* 234 Cal.App.4th 1, the court looked to section 2934a, subdivisions (b) and (c) to conclude, "the statutory process under which foreclosures may proceed in this state contemplates *both* the circumstance where the substitution of trustee is executed but not recorded until after the notice of default is recorded, *and* the circumstances where the substitution is first `effected' after the notice of default is recorded." (*Ram,* at p. 13, fn. omitted).) In *Ram,* even though the substitution was not effected until after the notice of default was recorded, "the supposed defect . . . cannot form the basis for rendering the ensuing trustee's sale not just voidable, but absolutely void."[15] (*Id.* at p. 13.)

We agree with the *Ram* court and note it cited and relied on an extensive body of law in the foreclosure area. Here**, the fact Quality was not substituted as trustee until after it filed the NOD does not render the ensuing foreclosure sale, or any documents upon which it was based, void.** By the time the NOTS and trustee's deed upon sale were prepared, Quality's substitution had been made and recorded, and notice of the substitution had been given to the parties specified in section 2934a, subdivision (c). As provided in section 2934a, subdivision (d), **"[o]nce recorded, the substitution shall constitute conclusive evidence of the authority of the substituted trustee or his or her agents to act pursuant to this section."**

In *Ram,* the court found alternate support for its conclusion. The court observed **section 2924, subdivision (a)(1) allows a notice of default to be recorded by the "`trustee, mortgagee, or beneficiary *or any of their authorized agents.*'"** (*Ram, supra,* 234 Cal.App.4th at p. 13.) The court observed nothing in the complaint or judicially noticed documents suggested Aztec was not authorized to act for OneWest. (*Id.* at p. 14.) The same is true here. Plaintiff alleges in her TAC that "[a]t all times mentioned, each of the Defendants herein were the agents, employees, and alter egos of each of the remaining Defendants, and was at all times acting within the course and scope of said agency and employment." Hence the TAC *concedes* Quality was a duly authorized agent for GMAC (and/or Nationstar) at the time it executed the NOD.

We understand plaintiff's assertion the foreclosure was wrongful also rests on her contention she was somehow wrongly denied a HAMP loan modification. Plaintiff admits she became delinquent in her loan payments and hired the services of a loan modification law firm. She alleges there

existed a loan modification contract under HAMP which was created and executed by all parties to the contract—Nationstar, Fannie Mae, and plaintiff—in July 2009, and that customer service agent Jamal from Nationstar confirmed the existence of the contract in March 2010. Plaintiff does not attach a copy of the HAMP loan modification contract to the TAC but instead alleges Nationstar and Fannie Mae created *and executed* the HAMP contract for *all* parties, including plaintiff, on their own accord.[16] In other words, plaintiff never alleges she executed or even saw a HAMP loan modification contract. Elsewhere in her TAC, plaintiff alleges alternatively: the HAMP contract was oral; the HAMP contract was written; and that she was a third-party beneficiary of a HAMP contract.

It is evident plaintiff knew about Nationstar's acquisition of the GMAC loan before any of the foreclosure documents were prepared (the NOD was in May 2010), because according to the TAC, she was talking to Nationstar customer service agent Jamal about a HAMP loan modification March 2010. **"The primary purpose of a notice of default is to provide notice of the amount in arrears and an opportunity to cure the default."** (*Ram, supra,* 234 Cal.App.4th at p. 17.) Plaintiff does not allege she never received the NOD. And clearly she knew to contact Nationstar as stated in the NOD, because she was already in communication with Nationstar when the NOD was recorded. Plaintiff's claim that the foreclosure was fraudulent because it was conducted by Nationstar lacks merit, and the HAMP allegations do not save the cause of action.

Having determined plaintiff cannot legally state a claim on the basis the foreclosure documents were void, plaintiff was required to allege prejudice and tender to maintain a cause of action for foreclosure. (*Ram, supra,* 234 Cal.App.4th at p. 12.) The TAC alleged neither.

Plaintiff argues on appeal she was prejudiced because the NOD "accelerated the debts owed by approximately 27 years, from the year 2036 declared on the DOT to year 2009 declared on the NOD." This is not prejudice; it is a consequence of plaintiff's failure to pay her home loan, a consequence that was clearly spelled out in the DOT under paragraph 22 concerning acceleration. Plaintiff must allege and show how any technical defect in the notice of default or other documents prejudiced her "by impairing [her] ability to either prevent or to contest the foreclosure." (*Ram, supra,* 234 Cal.App.4th at p. 17.) **The TAC does not allege plaintiff's ability to contest or avert foreclosure was impaired,**

and therefore plaintiff cannot articulate how any technical defect resulted in prejudice to her. (See *Debrunner v. Deutsche Bank National Trust Co., supra,* 204 Cal.App.4th at p. 443.) Plaintiff does not contend she never received notice Nationstar had substituted Quality as the new trustee, nor does she contend she never received notice of the foreclosure sale, which occurred while she was involved in litigation with Nationstar, GMAC, and Quality in the federal case, and with Nationstar and Fannie Mae in the instant case.

Plaintiff further argues tender is not required because an exception applies, i.e., that the trustee's deed is void on its face. While we agree with the legal proposition tender is not required where the trustee's deed is void on its face or under other limited circumstances not applicable here (*Majd v. Bank of America, N.A., supra,* 243 Cal.App.4th at p. 1305; *Miles v. Deutsche Bank National Trust Co., supra,* 236 Cal.App.4th at p. 408; *Ram, supra,* 234 Cal.App.4th at p. 12), in this case plaintiff has not alleged facts showing the trustee's deed was void. The court did not err in sustaining the demurrer to the wrongful foreclosure cause of action without leave to amend.

Leave to Amend

Finally plaintiff contends she should have been granted leave to amend. However, plaintiff did not explain to the trial court, and has not explained to us, how the TAC could be amended to overcome its deficiencies. It is not up to the court to figure out how the complaint can be amended to state a cause of action. Rather, the burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading. (See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; see also *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 994 [court did not abuse discretion in denying leave to amend where, despite ample opportunity, the plaintiff failed to demonstrate it could cure defect].)

DISPOSITION

The judgment of dismissal is affirmed. Respondents shall recover their costs on appeal.

O'LEARY, P. J. and THOMPSON, J., concurs.

[1] Plaintiff was declared a vexatious litigant after the appeal in this case was filed. In the case wherein plaintiff was declared a vexatious litigant, she appealed a court order requiring her to furnish security to avoid having her case dismissed. We affirmed. (*Nguyen v. Tom Vo's Taekwondo Academy, Inc.* (Feb. 8, 2017, G051952 [nonpub. opn.].)

[2] "All dismissals ordered by the court shall be in the form of a written order signed by the court and filed in the action and those orders when so filed shall constitute judgments and be effective for all purposes, and the clerk shall note those judgments in the register of actions in the case." (Code Civ. Proc., § 581d.) Here, the court signed the written order dismissing the TAC.

[3] "MERS was formed by a consortium of residential mortgage lenders and investors to streamline the transfer of mortgage loans and thereby facilitate their securitization. A member lender may name MERS as mortgagee on a loan the member originates or owns; MERS acts solely as the lender's `nominee,' having legal title but no beneficial interest in the loan. When a loan is assigned to another MERS member, MERS can execute the transfer by amending its electronic database. When the loan is assigned to a nonmember, MERS executes the assignment and ends its involvement." (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 931, fn. 7 (*Yvanova*).)

[4] All further statutory references are to the Civil Code.

[5] **As it read in 2009 and 2010, section 2923.5, subdivision (g)(3), provided, "A notice of default may be filed pursuant to Section 2924 when a mortgagee, beneficiary, or authorized agent has not contacted a borrower as required by paragraph (2) of subdivision (a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgagee, beneficiary, or authorized agent. For purposes of this section, "due diligence" shall require and mean all of the following: . . . (3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgagee, beneficiary, or authorized agent shall then send a certified letter, with return receipt requested."**

[6] The copy of the substitution of trustee contained in the record on appeal does not show the recordation date. We sent the parties notice of our intent to take judicial notice of the recorded document under Evidence Code section 459 and received no opposition. Accordingly, we take judicial notice of the fact that the substitution of trustee was recorded on August 3, 2010, in the Official Records of Orange County.

[7] In response, Quality filed a declaration of nonmonetary status representing it was named as a defendant solely in its capacity as trustee under the deed of trust. In May 2017, plaintiff notified us she had settled with Summergreen Homeowners Association and Huntington West Properties.

[8] These were, as styled by plaintiff: (2) negligence; (3) punitive; (4) contractual breach of implied covenant of good faith and fair dealing; (6) unconscionability under UCC 2-

3202; (7) breach of fiduciary duties; (8) violation of EESA (Emergency Economic Stabilization Act); (9) invalid notice of default; (10) invalid mortgage note; (11) lack standing to issue NOD; (12) lack standing to foreclose; (13) lack standing to sell; and (14) lack standing to buy.

[9] Plaintiff's exhibits are appended to a request for judicial notice, which is itself appended to the TAC.

[10] The quoted portion of the minute order relates to GMAC's demurrer, which is not before us. The court appears to have inadvertently failed to specify its *reasoning,* as opposed to the result, for sustaining the demurrer to the sixth cause of action as to Nationstar, et al. However, we assume the analysis would not change.

[11] "As authorized by Congress, the United States Department of the Treasury implemented the Home Affordable Mortgage Program (HAMP) to help homeowners avoid foreclosure during the housing market crisis of 2008. `The goal of HAMP is to provide relief to borrowers who have defaulted on their mortgage payments or who are likely to default by reducing mortgage payments to sustainable levels, without discharging any of the underlying debt.'" (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 785.)

[12] All these arguments are related to a wrongful foreclosure cause of action, which plaintiff never alleged in her previous SAC. We give plaintiff the benefit of the doubt by reviewing her wrongful foreclosure cause of action alleged in the TAC, even though it may be outside the scope of the court's order permitting her leave to amend the fraud and unfair and deceptive business act practices causes of action in the SAC. (See *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015 [when demurrer sustained with leave to amend, leave must be construed as permission to amend causes of action to which demurrer has been sustained, not to add entirely new causes of action, but addition of new cause of action may be proper when it "directly responds to the court's reason for sustaining the earlier demurrer"].)

[13] Plaintiff's TAC is particularly onerous to review in that it is single-spaced in violation of California Rules of Court, rule 2.108(1).

[14] Similarly, in *Yvanova, supra,* 62 Cal.4th 919, our Supreme Court recently considered whether and when a wrongful foreclosure plaintiff may challenge the authority of one who claims it by assignment. The court concluded, "If 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, and such an unauthorized sale constitutes a wrongful foreclosure." (*Id.* at p. 935.) "Unlike a voidable transaction, a void one cannot be ratified or validated by the parties to it even if they so desire." (*Id.* at p. 936.)

[15] **Section 2934a, subdivision (c) provides in relevant part, "*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 2929b, 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."** (Italics added.)

[16] Fannie Mae did not acquire an interest in the property until September 2010.