

LOANDEPOT.COM, LLC, Plaintiff and Appellant,
v.
ELIZABETH W. COOTS, Individually and as Trustee, etc. et al., Defendants
and Respondents.

[No. C087378.](#)

Court of Appeals of California, Third District, Nevada.

Filed October 20, 2020.

Appeal from the Super. Ct. No. CU17082373.

NOT TO BE PUBLISHED

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DUARTE, J.

Defendants Don R. Coots and Elizabeth W. Coots applied for and received a residential refinance loan from plaintiff LoanDepot.Com, LLC, regarding real trust. Defendants later defaulted on the loan, and plaintiff instituted foreclosure proceedings. Plaintiff purchased the property at a nonjudicial foreclosure auction for an amount equal to the outstanding debt on the property. Upon taking possession of the property, plaintiff discovered that construction defects had substantially diminished the value of the property. Contending defendants made material misrepresentations in their loan application, plaintiff brought the instant action against defendants for fraudulent inducement, negligent misrepresentation, and bad faith waste. It sought damages representing the diminution of value of the property.

Defendant^[1] moved for judgment on the pleadings, and she requested that the trial court take judicial notice of the amount plaintiff bid for the property and the amount of outstanding debt on the loan as stated on the trustee's deed of sale. The trial court took judicial notice as requested and granted defendant's motion for judgment on the pleadings.

Plaintiff appeals both the judicial notice ruling and the grant of defendant's motion for judgment on the pleadings.^[2] We will affirm.

FACTS AND PROCEEDINGS

Factual Background

Because plaintiff's causes of action were dismissed on a motion for judgment on the pleadings, we accept as true all material facts as alleged in the complaint. ([*Ludgate Ins. Co. v. Lockheed Martin Corp.* \(2000\) 82 Cal.App.4th 592, 602.](#))

In 2001 defendants purchased the property. In 2010, they filed a construction defect lawsuit against a construction company, alleging the company caused cracked walls and other foundational issues. Both Don and Elizabeth Coots were deposed pursuant to that lawsuit.

While the construction defect lawsuit was pending, defendants submitted a loan application to plaintiff relating to the property. Defendants represented on the application they were not parties to any lawsuit. In September 2012 plaintiff made a residential refinance loan in the amount of \$506,646 to defendants, secured by a first position deed of trust upon the property.

Defendants subsequently defaulted on that loan, and plaintiff instituted foreclosure proceedings. Plaintiff purchased the property at a nonjudicial foreclosure sale, also known as a trustee's sale. A recorded trustee's deed upon sale dated November 25, 2014, and recorded December 2, 2014, reflected that the amount of unpaid debt together with costs was \$560,078.36, and the amount paid by plaintiff at the trustee sale was \$560,078.36. The trustee's deed stated there was no documentary transfer tax. No other outstanding costs or fees were listed on the trustee's deed.

Upon taking post-foreclosure possession of the property, plaintiff discovered the property was significantly impaired and uninhabitable.

Procedural History

In July 2017 plaintiff filed a complaint alleging causes of action for fraudulent inducement, negligent misrepresentation, and bad faith waste. Plaintiff sought a judgment of not less than \$350,000, representing the diminution of value of the property. Defendant Elizabeth Coots answered the complaint.

In February 2018 defendant moved for judgment on the pleadings; she asserted plaintiff's full credit bid at the trustee's sale affirmed its security was not impaired and that it suffered no damages. In support of her motion, defendant requested that the trial court take judicial notice of the bid amount and the amount of unpaid debt as reflected in the trustee's deed upon sale.

Plaintiff opposed the motion for judgment on the pleadings on the following grounds: (1) the motion sought consideration of controverted facts outside the scope of the pleadings; (2) a beneficiary can maintain an action for damages against a borrower for fraudulent inducement; (3) a full credit bid does not bar fraud claims; and (4) plaintiff may recover damages flowing from defendant's alleged fraud. Plaintiff's opposition to defendant's request for judicial notice argued that a court may not take judicial notice of the truth of matters asserted in a trustee's deed because such statements are inadmissible hearsay.

Following oral argument, the trial court took judicial notice of the amount of unpaid debt and the amount paid by plaintiff at the trustee's sale from the trustee's deed. Then the court granted defendant's motion for judgment on the pleadings. The court entered judgment of dismissal on April 24, 2018. Notice of Entry of Judgment was served on April 27, 2018. Plaintiff timely appealed the judgment.

DISCUSSION^[3]

I

Judicial Notice

In ruling on defendant's motion for judgment on the pleadings, the trial court took judicial notice of the trustee's deed, the amount of the unpaid debt, and the amount paid by plaintiff at the trustee's sale as stated in the trustee's deed. The parties agree the court could properly take judicial notice of the existence of the trustee's deed, the recordation of the deed upon sale, the date of recordation, and the parties to the deed. However, plaintiff contends the court improperly took judicial notice of and accepted as true the amount of unpaid debt and the bid amount appearing on the trustee's deed upon sale. Plaintiff contends those facts are hearsay statements not properly subject to judicial notice. We disagree.

A. Standard of Review

We review the trial court's ruling on a request for judicial notice for an abuse of discretion. ([Fontenot v. Wells Fargo Bank, N.A. \(2011\) 198 Cal.App.4th 256, 264](#))

(Fontenot), disapproved on other grounds in [*Yvanova v. New Century Mortgage Corp.* \(2016\) 62 Cal.4th 919, 939, fn. 13.](#)) "[A] reviewing court should not disturb the exercise of a trial court's discretion unless it appears that there has been a miscarriage of justice. . . . It is fairly deducible from the cases that one of the essential attributes of abuse of discretion is that it must clearly appear to effect injustice. [Citations.] Discretion is abused whenever, in its exercise, the court exceeds the bounds of reason, all of the circumstances before it being considered. The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power." ([*Denham v. Superior Court* \(1970\) 2 Cal.3d 557, 566.](#))

B. Legal Background

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." [Citation.]" ([*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* \(2007\) 152 Cal.App.4th 1106, 1117 \(*Poseidon*\).](#)) "Evidence Code section 452, subdivisions (c) and (h), respectively, permit a court, in its discretion, to take judicial notice of '[o]fficial acts . . . of any state of the United States' and '[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." ([*Fontenot, supra*, 198 Cal.App.4th at p. 264.](#)) "Pursuant to these provisions, courts have taken judicial notice of the existence and recordation of real property records, including deeds of trust, when authenticity of the documents is not challenged. [Citations.] The official act of recordation and the common use of a notary public in the execution of such documents assure their reliability, and the maintenance of the documents in the recorder's office makes their existence and text capable of ready confirmation, thereby placing such documents beyond reasonable dispute." (*Id.* at pp. 264-265.) A court may take judicial notice of something that cannot reasonably be controverted "even if it negates an express allegation of the pleading." (*Poseidon*, at p. 1117.)

Where there is no genuine dispute regarding the authenticity of a recorded document, courts may also take judicial notice of a recorded document's legally operative language and deduce and rely upon the legal effect of the document. ([*Fontenot, supra*, 198 Cal.App.4th at p. 265.](#)) For example, in [*McElroy v. Chase Manhattan Mortgage Corp.* \(2005\) 134 Cal.App.4th 388, 394.](#) the court took

judicial notice of the recordation of a notice of default and election to sell under a deed of trust, the date of the notice's recordation, and the amount required to reinstate the loan and avoid foreclosure as stated in the notice to show the McElroys knew the amount owed and had an opportunity to cure a defective tender.

A court may not, however, take judicial notice of facts contained within a recorded document without demonstrating that those facts are "not reasonably subject to dispute." ([Poseidon, supra, 152 Cal.App.4th at p. 1118](#); see [Herrera v. Deutsch Bank National Trust Co. \(2011\) 196 Cal.App.4th 1366, 1374-1375 \(Herrera\)](#).)

In *Poseidon*, this court observed that judicial notice of a recorded substitution of trustee was proper, but the court could not take judicial notice of the truth of the hearsay factual statement within the document that an entity "is the present holder of beneficial interest under said Deed of Trust." ([Poseidon, supra, 152 Cal.App.4th at p. 1117](#).) The court observed that this recitation of fact was hearsay and "cannot be considered not reasonably subject to dispute." (*Ibid.*) Indeed, in that case, Poseidon disputed the assertion that another entity was the holder of the beneficial interest and claimed that it had retained beneficial interest in the note with power to foreclose on the deed of trust. (*Id.* at p. 1118.) The court recognized, however, that it was permitted to take judicial notice of the legal effect of a separate recorded assignment of beneficial interest, in which Poseidon had assigned its interest under the deed of trust to another entity. (*Ibid.*)

In *Herrera*, this court held that judicial notice could not be taken of the truth of a recitation in a recorded substitution of trustee. ([Herrera, supra, 196 Cal.App.4th at p. 1375](#).) The substitution of trustee asserted that a certain bank was "the present beneficiary under" a deed of trust. (*Ibid.*) But we observed that fact was disputed and hearsay. (*Ibid.*) In addition, the assignment of deed of trust establishing that the bank was the beneficiary under the deed of trust recited, "JPMorgan Chase Bank, `successor in interest to WASHINGTON MUTUAL BANK, SUCCESSOR IN INTEREST TO LONG BEACH MORTGAGE COMPANY' assigns all beneficial interest under" the deed of trust to the bank. (*Ibid.*) We noted the bank offered no evidence to support the hearsay assertion that JPMorgan was the successor in interest such that it could assign its interest to the bank. (*Ibid.*) We held that judicial notice was inappropriate there because "[t]he truthfulness of the contents of the Assignment of Deed of Trust remains subject to dispute [citation], and plaintiffs dispute the truthfulness of the contents of all the recorded documents." (*Ibid.*)

C. Analysis

In the matter before us, the trial court did not abuse its discretion in taking judicial notice of the amount owed and plaintiff's bid amount as recited in the trustee's deed. The trustee's deed was signed by the trustee, notarized by a notary public, and recorded in the Nevada County Recorder's Office. The trustee's deed recited that all statutory notice requirements and procedures required by law for the conduct of the foreclosure sale were satisfied, which created a presumption that the sale was conducted regularly and properly. ([Nguyen v. Calhoun \(2003\) 105 Cal.App.4th 428, 441-442.](#))

Plaintiff does not contest the authenticity or validity of the trustee's deed, nor does it dispute the accuracy of the amounts stated therein. The complaint only alleged that plaintiff "completed foreclosure proceedings against the [property]." Similarly, plaintiff's opposition to defendant's request for judicial notice only asserted the amounts stated in the trustee's deed are not properly judicially noticed, not that the figures were incorrect or reasonably subject to dispute. The bid amount and outstanding debt amount judicially noticed from the trustee's deed are not the type of unreliable hearsay statements at issue in *Herrera* and *Poseidon*. In those cases, the facts not subject to judicial notice involved disputed assertions by entities claiming to be the beneficiary of a deed of trust in a recorded substitution of trustee. ([Poseidon, supra, 152 Cal.App.4th at pp. 1116, 1117](#); [Herrera, supra, 196 Cal.App.4th at p. 1375.](#)) Here, plaintiff provides no reason to conclude the amounts judicially noticed by the court are reasonably subject to dispute. Therefore, the court did not abuse its discretion in judicially noticing those amounts.

II

Judgment on the Pleadings

Plaintiff next contends the trial court erred in granting defendant's motion for judgment on the pleadings because (1) the full credit bid rule does not apply when the beneficiary bids in continuing reliance upon the tortfeasor's misrepresentations, and (2) even if the full credit bid rule does apply, plaintiff has recoverable damages. We conclude the case on which plaintiff relies is not applicable to the facts before us, and therefore we reject plaintiff's argument.

A. Standard of Review

A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc.,

§ 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review. ([Gerawan Farming, Inc. v. Lyons \(2000\) 24 Cal.4th 468, 515](#); [Dudley v. Department of Transp. \(2001\) 90 Cal.App.4th 255, 259](#).) All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law; judicially noticeable matters may be considered. ([Blank v. Kirwan \(1985\) 39 Cal.3d 311, 318](#).)

B. Nonjudicial Foreclosure And The Full Credit Bid Rule

"California has an elaborate and interrelated set of foreclosure and antideficiency statutes relating to the enforcement of obligations secured by interests in real property." ([Alliance Mortgage Co. v. Rothwell \(1995\) 10 Cal.4th 1226, 1236 \(Alliance\)](#).) "Pursuant to this statutory scheme, there is only 'one form of action' for the recovery of any debt or the enforcement of any right secured by a mortgage or deed of trust. That action is foreclosure, which may be either judicial or nonjudicial." (*Ibid.*; Code Civ. Proc., §§ 725a, 726, subd. (a).)

"In a nonjudicial foreclosure, also known as a 'trustee's sale,' the trustee exercises the power of sale given by the deed of trust. [Citation.]" ([Alliance, supra, 10 Cal.4th at p. 1236](#).) The trustee invites bids, in an ostensible competitive bidding process, to purchase the real property securing an underlying debt. At such a sale, the lender is entitled to bid to purchase the real property. "[I]f the lender chooses to bid, it does so in the capacity of a purchaser. [Citation.] The only distinction between the lender and any other bidder is that the lender is not required to pay cash, but is entitled to make a credit bid up to the amount of the outstanding indebtedness. [Citations.] The purpose of this entitlement is to avoid the inefficiency of requiring the lender to tender cash which would only be immediately returned to it." [Citation.]" ([Kalnoki v. First American Trustee Servicing Solutions, LLC \(2017\) 8 Cal.App.5th 23, 45 \(Kalnoki\)](#).)

The lender is not required to enter a bid at an amount equal to the outstanding debt. Rather, "[t]he beneficiary or mortgagee need only enter a credit bid in an amount equal to what he assesses the fair market value of the property to be in its condition at the time of the foreclosure sale. If that amount is below the full amount of the outstanding indebtedness and he is successful in acquiring the property at the foreclosure sale, he may then recover any provable damages for waste." ([Cornelison v. Kornbluth \(1975\) 15 Cal.3d 590, 608](#).)

"A "full credit bid" is a bid "in an amount equal to the unpaid principal and interest of the mortgage debt, together with the costs, fees, and other expenses of the foreclosure." [Citation.] "If the full credit bid is successful, i.e., results in the acquisition of the property, the lender pays the full outstanding balance of the debt and costs of foreclosure to itself and takes title to the security property, releasing the borrower from further obligations under the defaulted note." [Citation.]" ([Kalnoki, supra, 8 Cal.App.5th at p. 45.](#))

"The purchaser at a nonjudicial foreclosure sale generally "receives title under a trustee's deed free and clear of any right, title or interest of the trustor." [Citation.] "If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser." [Citation.]" ([Kalnoki, supra, 8 Cal.App.5th at p. 45.](#)) Delivery of the deed by the trustee makes conclusive the presumption that the sale was properly conducted ([Biancalana v. T.D. Service Co. \(2013\) 56 Cal.4th 807, 814](#)), and recordation of the deed perfects the title. (Civ. Code, § 2924h, subd. (c).)

Typically, a secured creditor who makes a full credit bid is precluded from later claiming the property is actually worth less than the full credit bid. ([Najah v. Scottsdale Ins. Co. \(2014\) 230 Cal.App.4th 125, 133 \(Najah\).](#)) "This is because the lender's only interest in the property is the repayment of the debt. [Citation.] The lender's interest having been satisfied, any other payment would result in a double recovery." [Citations.] "Thus, the lender is not entitled to insurance proceeds payable for prepurchase damage to the property, prepurchase net rent proceeds, or damages for waste, because the lender's only interest in the property, the repayment of its debt, has been satisfied, and any further payment would result in a double recovery." [Citation.]" (*Id.* at p. 134.)

The full credit bid rule serves to protect the integrity of the foreclosure auction, which is intended to resolve the question of the property's value through competitive bidding. ([Najah, supra, 230 Cal.App.4th at p. 134.](#)) "A lender who intends to later claim that the value of the property was impaired due to waste, fraud or insured damage, but nonetheless makes a full credit bid, interferes with that process by impeding bids from third parties willing to pay some amount between the value the lender places on the property and the amount of its full credit bid. [Citation.]" (*Id.* at p. 135.)

C. Fraud Exception to the Full Credit Bid Rule

Our Supreme Court has carved out a limited exception to the full credit bid rule where fraud affected the lender's bid. (See [Alliance, supra, 10 Cal.4th 1226.](#)) At issue in *Alliance* was whether "a lender's acquisition of security property by full credit bid at a nonjudicial foreclosure sale bars the lender from maintaining a fraud action to recover damages from *nonborrower third parties* who fraudulently induced the lender to make the loans." (*Id.* at p. 1234 (italics added).) Specifically, in *Alliance* the court considered whether as a result of its full credit bids, the lender "could demonstrate neither justifiable reliance nor actual damages" (*id.* at p. 1246), both essential elements of fraud (*id.* at p. 1239).

Alliance first discussed reliance: "As with any purchaser at a foreclosure sale, by making a successful full credit bid or bid in any amount, the lender is making a generally irrevocable offer to purchase the property for that amount. [Citation.] The lender, perhaps more than a third party purchaser with fewer resources with which to gain insight into the property's value, generally bears the burden and risk of making an informed bid. [¶] It does not follow, however, that being intentionally and materially misled by its own fiduciaries or agents as to the value of the property prior to even making the loan is within the realm of that risk. [Citation.] Most lenders, such as [the lender] in this case, are corporate entities, and rely on their agents to provide them material information. Here, [the lender] did obtain appraisals, and attempted to make informed loan decisions. It alleges, however, that its appraiser . . . in conspiracy with defendants, fraudulently misrepresented the nature of the properties and the existence and qualifications of the buyers, and that it did not discover the fraud until after it acquired title to the properties. The full credit bid rule was not intended to immunize wrongdoers from the consequences of their fraudulent acts." ([Alliance, supra, 10 Cal.4th at p. 1246,](#) footnote omitted.) Therefore, "in order to establish reliance, [the lender] need only demonstrate that its full credit bids were a proximate result of defendants' fraud, and that in the absence of such fraud it would not, in all reasonable probability, have made the bids. [Citation.]" (*Id.* at pp. 1246-1247.)

The court concluded, "to the extent [the lender's] full credit bids were proximately caused by defendants' fraudulent misrepresentations, and this reliance without independent or additional inquiry was either appropriate given the context of the relationship or was not otherwise manifestly unreasonable, [the lender's] bids cannot be deemed an admission of the properties' value. [Citation.] Hence, the full credit bid rule would not apply." ([Alliance, supra, 10 Cal.4th at p. 1247.](#))

Two cases delineate the boundaries of *Alliance*'s holding as relevant to the facts here. In [Michelson v. Camp \(1999\) 72 Cal.App.4th 955](#) at page 969, a lender

alleged it was induced to enter into a loan agreement by an appraiser's intentional or negligent misrepresentations. Before making a full credit bid at auction, the lender obtained a reappraisal of the property. The lender asserted it was entitled to damages based on the initial appraiser's misrepresentations. The court disagreed; it concluded the lender could not reasonably rely on the initial appraisal to avoid the full credit bid rule because the lender had obtained a subsequent appraisal before the auction. The court concluded, "in order to avoid the full credit bid rule, the lender must have been induced to enter into the loan by the false representation, *and* still be under the mistaken belief that the representation was true at the time it makes the full credit bid." (*Ibid.*)

In [*Sumitomo Bank v. Taurus Developers, Inc.* \(1986\) 185 Cal.App.3d 211](#) at page 222 (*Sumitomo*), the court concluded a lender may not justifiably rely on the representations or nondisclosures of a *borrower* during the lender transaction to support a claim for fraudulent inducement, and therefore the lender's claims for breach of contract, fraud, and bad faith waste were barred by the full credit bid rule. There, Sumitomo had loaned Taurus money to build a condominium project, and Taurus defaulted on its payments. Sumitomo exercised its power of sale and purchased the property at an amount equal to the outstanding indebtedness at the trustee's sale. Sumitomo subsequently discovered latent defects in the construction. The trial court dismissed Sumitomo's causes of action for breach of contract, fraud, and waste due to its full credit bid at the trustee's sale. (*Id.* at p. 217.)

The appellate court observed, "even if Taurus fraudulently induced [Sumitomo] to enter into the loan agreement and to continue making disbursements, [Sumitomo] cannot maintain a cause of action because it obtained property valued at an amount equal to the outstanding debt, and thus, as a lender has suffered no damages." ([*Sumitomo, supra*, 185 Cal.App.3d at p. 220.](#)) The court observed Taurus's alleged misrepresentations occurred in the context of the loan transaction, rather than as a trustor at the trustee's sale. (*Id.* at p. 221.) Taurus neither set the price at the trustee's sale nor represented the value of the property at the sale. (*Ibid.*) Sumitomo decided at what price it would bid. (*Ibid.*) The court concluded Taurus "cannot be characterized as a `seller' under a duty to disclose known defects as exists in the normal vendor-vendee relationship." (*Ibid.*) "In short, when [Sumitomo] made its decision to enter a bid, it was not entitled to rely on representations or nondisclosures occurring during the lender transaction, or nondisclosures during the trustee's sale, and thus its claim of fraudulent inducement to make a full credit bid lacks the essential element of justifiable reliance. [Citations.]" (*Id.* at p. 222.)

D. Analysis

Plaintiff acknowledges that the fraud exception to the full credit bid rule as stated in *Alliance* applies specifically to nonborrower third party tortfeasors in a fiduciary relationship with the lender-bidder. But it contends *Alliance*'s rationale and holding apply equally well to circumstances involving fraudulent inducement by the borrower. Plaintiff asserts that it justifiably relied on defendant's representations—or misrepresentations—on the loan application in September 2012 to make its full credit bid at the trustee's sale in December 2014.

We disagree. The facts here are not similar to those in *Alliance*, where the lender obtained appraisals and attempted to make informed decisions, but where the lender's own agents and fiduciaries conspired to intentionally mislead it as to the value of the properties. (See *Alliance, supra*, 10 Cal.App.4th at p. 1246.) Here, plaintiff could not justifiably rely on defendants' representations in the context of the loan transaction.

Instead, this case is comparable to *Sumitomo*, where the court recognized that the borrower neither set the price at the trustee's sale nor represented the value of the property for sale. ([Sumitomo, supra, 185 Cal.App.3d at p. 220.](#)) Plaintiff had the obligation to conduct its own valuation of the property before making a full credit bid at the trustee's sale. Having apparently failed to do so, plaintiff cannot now blame defendant for its failure. The fraud exception to the full credit bid rule as described in *Alliance* does not apply. Because plaintiff made a full credit bid here, its security was not impaired, and it cannot maintain a claim for waste.

Plaintiff next contends that, even where the full credit bid rule applies to bar its claims, it may still recover damages flowing from defendant's fraud. Specifically, plaintiff contends it is entitled to expenses incurred separately and apart from the value of the secured property, including taxes and insurance. In making its argument, plaintiff continues to analogize the facts here to those in *Alliance*, which we have already explained is readily distinguishable. The measure of damages for waste is the same as the measure of damages for fraud (see [Sumitomo, supra, 185 Cal.App.3d at pp. 217-218](#), [Cornelison v. Kornbluth, supra, 15 Cal.3d at p. 606](#)), and therefore plaintiff's full credit bid released defendant "from further obligations under the defaulted note" ([Kalnoki, supra, 8 Cal.App.5th at p. 45](#)). Any recovery for plaintiff here would constitute double recovery. ([Najah, supra, 230 Cal.App.4th at p. 134.](#))

Finally, plaintiff contends the trial court abused its discretion by not granting it leave to amend its complaint. In determining whether a trial court should have granted leave to amend, we consider whether on the pleaded and noticeable facts,

there is a reasonable possibility of an amendment that would cure the complaint's legal defect or defects. ([*Schifando v. City of Los Angeles* \(2003\) 31 Cal. 4th 1074, 1081.](#)) Where there is a reasonable possibility that the defect can be cured by amendment, the trial court will be found to have abused its discretion. ([*City of Dinuba v. County of Tulare* \(2007\) 41 Cal. 4th 859, 865.](#))

We disagree the trial court abused its discretion in not granting plaintiff leave to amend. Plaintiff made a full credit bid, and there is no reasonable possibility that amendment to the complaint would show otherwise. Nor is there a reasonable possibility that plaintiff would be able to amend its complaint to show fraud by its fiduciaries, rather than the borrowers, such that the fraud exception to the full credit bid rule would apply. The court did not abuse its discretion.

DISPOSITION

The judgment is affirmed. Costs awarded to defendant. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

Robie, Acting P.J. and Hoch, J., concurs.

[1] Defendant Don Coots was deceased at the time the lawsuit was filed; therefore, we refer to Elizabeth Coots as "defendant" for purposes of the trial court proceedings and plaintiff's appeal.

[2] Plaintiff filed its notice of appeal in June 2018. Briefing was completed in January 2019. The panel as presently constituted was assigned this matter in May 2020.

[3] Defendant asserts plaintiff's appeal must be dismissed because plaintiff failed to provide a statement of appealability as required by California Rules of Court, rule 8.204(a)(2)(B). We are authorized to strike plaintiff's brief. ([*Lester v. Lennane* \(2000\) 84 Cal.App.4th 536, 557.](#)) Because the order appealed from is an appealable order (Code Civ. Proc., § 904.1, subd. (a)), we choose to disregard the noncompliance and consider the parties' arguments on their merits (Cal. Rules of Court, rule 8.204(e)(2)(C)).