

RUDIE THOMAS, JR., Plaintiff and Appellant,
v.
SOUTHLAND HOME MORTGAGE II, LLC, Defendant and
Respondent.

[No. D071594.](#)

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

Filed December 14, 2017.

APPEAL from a judgment of the Superior Court of San Diego County, Super. Ct. No. 37-2016-00019344-CU-OR-CTL, Joel R. Wohlfeil, Judge. Affirmed.

Rudie Thomas, Jr., in pro. per., for Plaintiff and Appellant.

Law Office of John D. Feher and John D. Feher, for Defendant and Respondent.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

NARES, J.

Rudie Thomas, Jr., appearing in propria persona, appeals from a judgment dismissing his second amended complaint alleging wrongful foreclosure related causes of action after the trial court sustained the demurrer of Southland Home Mortgage II, LLC (Southland) without leave to amend. Thomas makes several arguments, none of which have merit. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Because the challenged ruling arises in the context of a demurrer, we accept as true the material factual allegations of the second amended complaint unless inconsistent with judicially noticed documents ([Hoffman v.](#)

Smithwoods RV Park, LLC (2009) 179 Cal.App.4th 390, 400 (Hoffman)), but do not accept "contentions, deductions, or conclusions of fact or law." (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.)

In June 2016 Thomas filed his original complaint against Southland and Wells Fargo Bank, NA (Wells Fargo). Later that month Thomas filed a first amended complaint.^[1] In October 2016 Thomas filed his operative second amended complaint alleging the following claims against Southland: Southland is not a bona fide purchaser, quiet title, wrongful foreclosure, declaratory relief, cancellation of instruments, and violation of Business and Professions Code section 17200. Thomas claims that he owns certain real property located on Coleman Avenue in San Diego, California (the property). Attached to the complaint are numerous documents, including recorded documents pertaining to Thomas's real property transaction. The documents show the following:

On August 28, 2014, a grant deed was recorded transferring title to the property to Thomas. That same day a deed of trust was recorded against the property securing a \$356,385 loan, listing Thomas as the borrower and Moria Development, Inc. (Moria) as the lender. At closing, a notary signed and stamped the deed of trust showing that the notary witnessed Thomas's signature. On September 9, 2015, a corporate assignment of deed of trust was recorded whereby Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Moria assigned all beneficial interest in the deed of trust to Wells Fargo.^[2]

On December 29, 2015, a substitution of trustee was recorded substituting Quality Loan Service Corporation (Quality Loan) as trustee under the deed of trust in place of Wells Fargo. On December 31, 2015, Quality Loan recorded a "Notice of Default and Election to Sell Under Deed of Trust" stating that Thomas was over \$12,000 behind in his payments on the loan. On April 4, 2016, Quality Loan recorded a "Notice of Trustee's Sale" stating that the property would be sold at auction on May 3, 2016.

On May 3, 2016, the property was sold at a trustee's sale pursuant to the power of sale contained in the deed of trust. Southland was the successful bidder at trustee's sale and received a trustee's deed upon sale under which it obtained title to the property. On May 13, 2016, the trustee's deed upon sale was recorded.

The operative complaint alleges the following facts:

Thomas asserts that defendant Wells Fargo, under pressure to create phony accounts, forged his signature on the note that encumbers the property. Accordingly, he asserts the foreclosure of the property was void and Southland cannot be a bona fide purchaser on a void foreclosure. Thomas also claims that Southland is not a bona fide purchaser because Wells Fargo had no beneficial interest in the note and deed of trust, and because the foreclosure was not conducted by a duly appointed trustee. Based on the void foreclosure, Thomas seeks to quiet title to the property.

Thomas also seeks damages for wrongful foreclosure, alleging that Wells Fargo lacked the power to foreclose. Thomas seeks a declaration of his rights and duties under the note and deed of trust. He also seeks to cancel the notice of trustee's sale, assignment of deed of trust, trustee's deed upon sale, substitution of trustee and notice of default alleging these instruments are void based on his forged signature. Finally, Thomas claims a violation of Business and Professions Code section 17200 based on Wells Fargo's act of forging his signature.

Southland demurred, essentially arguing that the recorded documents show that Thomas's allegations lack merit. The trial court sustained the demurrer without leave to amend. Thomas timely appealed.

DISCUSSION

I. STANDARD OF REVIEW

We review the complaint de novo ([Cantu v. Resolution Trust Corp. \(1992\) 4 Cal.App.4th 857, 879](#)), with plaintiff bearing the burden of proving that the trial court erred in sustaining the demurrer ([Kong v. City of Hawaiian Gardens Redevelopment Agency \(2002\) 108 Cal.App.4th 1028, 1038](#)). We liberally construe a complaint "with a view to substantial justice between the parties." (Code Civ. Proc.,^[3] § 452.) To prevail on appeal from an order sustaining a demurrer, the plaintiff must affirmatively demonstrate error by showing that the facts pleaded are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer. (*Cantu*, at pp. 879-880.) We will affirm the ruling if there is any ground on which the demurrer could have been properly sustained. ([Debro v. Los Angeles Raiders \(2001\) 92 Cal.App.4th 940, 946.](#))

II. ANALYSIS

A. Procedural Issues

Southland asserts the appeal should be dismissed as premature because Thomas filed his notice of appeal in December 2016 before the trial court entered its judgment in January 2017. An order sustaining a demurrer without leave to amend is not appealable (§ 904.1), and **a party may appeal only after entry of a dismissal or judgment after such an order.** ([Melton v. Boustred \(2010\) 183 Cal.App.4th 521, 527, fn. 1.](#)) Nevertheless, we treat the premature notice as being from the subsequently entered judgment and review the order. (*Ibid.*)

Thomas claims the trial court erred when it sustained the demurrer because Southland failed to meet and confer as required by section 430.41. We disagree. At least five days before a responsive pleading is due, and before filing a demurrer, the demurring party is required to meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. (§ 430.41, subd. (a).) Nonetheless, any determination by the court that the meet and confer process was insufficient is not grounds to overrule or sustain the demurrer. (§ 430.41, subd. (a)(4).) Additionally, "[n]othing in this section affects appellate review. . . ." (§ 430.41, subd. (f).)

B. Alleged Void Note

Thomas alleged that Wells Fargo forged his signature on the note that encumbers the property. Based on this alleged forgery Thomas claims the note is void and that Southland is not a bona fide purchaser.

"Under the doctrine of truthful pleading, the courts `will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts that are judicially noticed.' [Citation.] `False allegations of fact, inconsistent with annexed documentary exhibits [citation] or contrary to facts judicially noticed [citation], may be disregarded. . . .'" ([Hoffman, supra, 179 Cal.App.4th at p. 400.](#)) **Evidence Code section 452 allows the court to take judicial notice of a fact or proposition within a recorded document "that cannot reasonably be controverted, even if it negates an express allegation of the pleading.'" (Fontenot v. Wells Fargo Bank, N.A. (2011)**

[198 Cal.App.4th 256, 264 \(Fontenot\)](#), disapproved of on another ground in [Yvanova v. New Century Mortgage Corp. \(2016\) 62 Cal.4th 919 \(Yvanova\)](#).)

Thus, a court may take judicial notice of the following facts: (1) a document's recordation, (2) the date it was recorded and executed, (3) the parties to the transaction as reflected in a recorded document, and (4) the legal effect of the documents' language. (Fontenot, at pp. 264-265.) "From this, the court may deduce and rely upon the legal effect of the recorded document, when that effect is clear from its face." (Id. at p. 265; see also [Scott v. JPMorgan Chase Bank, N.A. \(2013\) 214 Cal.App.4th 743, 754-756](#) [where judicial notice is requested of a legally operative document, the court may take notice not only of the fact of the document and its recording but also facts that clearly derive from its legal effect].)

Here, the grant deed and deed of trust attached to Thomas's complaint show that Thomas obtained title to the property on August 28, 2014, and that Moria was the loan originator, not Wells Fargo. **At closing, a notary signed and stamped the deed of trust showing that the notary witnessed Thomas's signature.** Thomas does not allege that his signature on the deed of trust is a forgery, and **the notary's acknowledgement is prima facie evidence that Thomas signed the deed of trust.** (Evid. Code, § 1451.) Wells Fargo did not become involved in this transaction until September 9, 2015, when Wells Fargo recorded a corporate assignment of deed of trust whereby MERS, as nominee for Moria, assigned all beneficial interest in the deed of trust to Wells Fargo. These exhibits take precedence over the contradictory allegations in the complaint. ([Fundin v. Chicago Pneumatic Tool Co. \(1984\) 152 Cal.App.3d 951, 955](#) [**"While allegations of the complaint are deemed to be true in ruling on the demurrers, where an allegation is contrary to law or to a fact of which a court may take judicial notice, it is to be treated as a nullity."**].)

The complaint fails to allege any facts showing Wells Fargo's involvement in the negotiation and origination of the loan, including the alleged forged promissory note. The boilerplate allegation in the complaint of Wells Fargo's involvement in the alleged forgery is insufficient in light of the exhibits to the complaint, which include the deed of trust showing Moria as the lender without any mention of Wells Fargo.

C. Southland Is a Bona Fide Purchaser

"Civil Code 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." ([Moeller v. Lien \(1994\) 25 Cal.App.4th 822, 830.](#)) **"A deed of trust to real property acting as security for a loan typically has three parties: the trustor (borrower), the beneficiary (lender), and the trustee. `The trustee holds a power of sale. If the debtor defaults on the loan, the beneficiary may demand that the trustee conduct a nonjudicial foreclosure sale.'** [Citation.] **The nonjudicial foreclosure system is designed to provide the lender-beneficiary with an inexpensive and efficient remedy against a defaulting borrower, while protecting the borrower from wrongful loss of the property and ensuring that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser."** ([Yvanova, supra, 62 Cal.4th at p. 926.](#))

"[T]he elements of a bona fide purchaser are payment of value, in good faith, and without actual or constructive notice of another's rights. [Citation.] `[A] bona fide purchaser for value who acquires his interest in real property without notice of another's asserted rights in the property takes the property free of such unknown rights.'" ([Deutsche Bank National Trust Co. v. Pyle \(2017\) 13 Cal.App.5th 513, 521.](#))

Thomas's first cause of action against Southland is entitled as Southland "is not a [b]ona [f]ide [p]urchaser Wells Fargo [p]hony [n]ote is [v]oid." Thomas alleges that the "phony [n]ote provided by Wells Fargo employees does not list Wells Fargo as the Lender." He also alleges that the deed of trust lists Moria as the original lender and that Southland cannot be a bona fide purchaser because Wells Fargo had no beneficial interest in the note or deed of trust and the foreclosure was not conducted by a duly appointed trustee.

The documents attached to the complaint contradict these allegations. Moria was the originator of the loan. MERS, as nominee for Moria, then assigned all beneficial interest in the deed of trust to Wells Fargo. Quality Loan was then substituted as trustee under the deed of trust in place of Wells Fargo. Quality Loan, as the new trustee, recorded a notice of default and then sold the property to Southland. The trustee's deed upon sale shows that the unpaid debt on the loan and costs totaled \$368,908.52, and that Southland paid \$328,500 for the property. These facts support the conclusion that

Quality Loan properly conducted the foreclosure sale as trustee and that Southland is a bona fide purchaser for value.

Finally, the trustee's deed upon sale contains the requisite language set forth in subdivision (c) of Civil Code 2924. Where, as here, **"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."** ([Moeller v. Lien, supra, 25 Cal.App.4th at p. 831.](#))

D. Thomas's Remaining Claims Fail

Thomas claims he is entitled to damages for wrongful foreclosure because the foreclosure sale was not conducted by Moria, the proper trustee. **THE PLAINTIFF IN A SUIT FOR WRONGFUL FORECLOSURE IS GENERALLY REQUIRED TO DEMONSTRATE THAT ALLEGED IMPERFECTIONS IN THE FORECLOSURE PROCESS WERE PREJUDICIAL TO HIS OR HER INTERESTS.** ([Fontenot, supra, 198 Cal.App.4th at p. 272.](#)) Here, however, the recorded documents show no imperfections in the foreclosure process.

Thomas requests judicial cancellation of the notice of trustee's sale, assignment of deed of trust, trustee's deed upon sale, substitution of trustee, and notice of default claiming these documents are void. **"To prevail on a claim to cancel an instrument, a plaintiff must prove (1) the instrument is void or voidable due to, for example, fraud, and (2) there is a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of one's position."** ([U.S. Bank National Assn. v. Naifeh \(2016\) 1 Cal.App.5th 767, 778.](#)) Thomas, however, failed to allege any facts, not contradicted by the judicially noticed exhibits attached to the complaints, showing the recorded documents that he seeks to cancel are void or voidable.

Thomas alleges that he is entitled to quiet title relief because his signature on the note was forged and the foreclosure sale was void. "Quieting title is the relief granted once a court determines that title belongs in plaintiff. . . . In other words, in such a case, the plaintiff must show he has a substantive right to relief before he can be granted any relief at all." ([Leeper v. Beltrami \(1959\) 53 Cal.2d 195, 216.](#)) Thus, Thomas's quiet title claim is dependent on

his other claims. Since these claims fail, the quiet title claim also necessarily fails.

Finally, Thomas's request for declaratory relief and claim that Southland violated Business and Professions Code section 17200 are derivative of his wrongful foreclosure claim and fail for the same reasons. Accordingly, the trial court properly sustained Southland's demurrer and did not abuse its discretion in denying any further opportunity to amend.

DISPOSITION

The judgment of dismissal is affirmed. Respondent is entitled to recover its costs on appeal.

HUFFMAN, Acting P. J. and IRION, J., concurs.

[1] The original complaint and first amended complaint are not included in the record on appeal. On our own motion, we take judicial notice of these documents contained in the superior court file in this case. (Evid. Code, §§ 455, 459.)

[2] **"As case law explains, `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.' [Citation.] `A side effect of the MERS system is that a transfer of an interest in a mortgage loan between two MERS members is unknown to those outside the MERS system.'" ([Gomes v. Countrywide Home Loans, Inc. \(2011\) 192 Cal.App.4th 1149, 1151.](#))**

[3] Undesignated statutory references are to the Code of Civil Procedure.