HILDA ALLEN, Plaintiff and Appellant,
v.
NATIONSTAR MORTGAGE LLC, et al., Defendants and Respondents.

No. A148001.

Court of Appeals of California, First District, Division Five.

Filed February 20, 2018.

Appeal from the Solano County, Superior Court No. FCS045534.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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NEEDHAM, J.

Hilda Allen appeals from a judgment entered after the trial court sustained a demurrer to her first amended complaint without leave to amend. She contends the court erred because she stated viable causes of action based on the funding of her mortgage loan by an unidentified lender, and the trial court should have continued the demurrer hearing and granted leave to amend. We will affirm.

I. FACTS AND PROCEDURAL HISTORY

The allegations of Allen's verified first amended complaint and the facts subject to judicial notice describe the relevant events as follows.

In April 2006, Allen borrowed $367,500 from SCME Mortgage Bankers, Inc. (SCME). To secure the loan, Allen signed a deed of trust encumbering property on Breton Drive in Fairfield.

The deed of trust identified SCME as the "`Lender.'" It named Mortgage Electronic Registration Systems, Inc. (MERS) as the beneficiary, "as a nominee for Lender and Lender's successors and assigns." The deed of trust

also provided: "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."

According to Allen's first amended complaint, the funds for the loan were not actually advanced by the named lender, SCME, but by an unidentified lender. Therefore, it is alleged, notwithstanding the language of the deed of trust that Allen signed, SCME in reality acted as a broker and there was a quasi-contract between Allen and the unidentified lender.

SCME dissolved and ceased operations on November 1, 2007. In October 2011, MERS assigned the deed of trust from SCME to "Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing LP, FKA Countrywide Home Loans Servicing LP" (BANA). A duplicate assignment was recorded in February 2012.

Meanwhile, Allen stopped making payments on her loan. By the time a notice of default was recorded in February 2012, she was more than $70,000 in arrears. In September 2013, BANA assigned its interest in the deed of trust to respondent Nationstar Mortgage LLC (Nationstar).

In January 2015, a notice of default was recorded, stating that Allen's arrearages had increased to $149,829.03. A notice of trustee's sale was recorded in June 2015.

The trustee's sale took place in July 2015, at which point Allen's total indebtedness was $525,321.79. The property was purchased at the trustee's sale for $420,635.40 by respondent Deutsche Bank National Trust Company, as Trustee for Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-5 (Deutsche Bank).

Shortly before the trustee's sale took place in July 2015, Allen filed this lawsuit. The complaint named the foreclosure trustee, respondent Barrett Daffin Fraipper Treder & Weiss, LLP (Barrett Daffin), and Nationstar as defendants. Nationstar filed a demurrer.

In response to Nationstar's demurrer, Allen filed her first amended complaint. The first amended complaint added Deutsche Bank as a defendant and purported to allege causes of action for intentional interference with contractual relations, violation of Civil Code section 2924.17, intentional misrepresentation, wrongful foreclosure, and violation of Civil Code section 2923.55.

Nationstar filed a demurrer to the first amended complaint, contending that Allen failed to state facts sufficient to constitute a cause of action, along with a request for judicial notice. Allen served—but did not timely file—an opposition to the demurrer. Nationstar filed a reply.

The trial court issued a tentative ruling sustaining the demurrer without leave to amend as to all causes of action. No party challenged the tentative. Pursuant to Solano County Superior Court Local Rule 3.9(b), "The tentative ruling *shall become* the ruling of the court unless a party desiring to be heard notifies the court and all other parties of the party's intention to appear." (Italics added.)

Notwithstanding the local rule, the parties showed up for the demurrer hearing. Allen's counsel stated that "this was an opposed motion" and his "litigation support" indicated that "they filed this opposition." The court observed that there was nothing in the online public docket indicating an opposition had been filed and asked whether Allen's counsel had an endorsed-filed copy. He did not. The court noted that the filing or non-filing of Allen's opposition was immaterial, because the court gleaned the nature of the opposition from Nationstar's reply memorandum.

The court adopted its tentative ruling without any further substantive comments from counsel. Allen filed her opposition to the demurrer later that day.

A judgment signed on March 4, 2016, dismissed the case as to Nationstar and Barrett Daffin but inadvertently omitted Deutsche Bank. Allen filed her notice of appeal from the judgment in March 2016. An amended judgment also dismissing Deutsche Bank was filed in February 2017.

II. DISCUSSION

"In our de novo review of an order sustaining a demurrer, we assume the truth of all facts properly pleaded in the complaint or reasonably inferred

from the pleading, but not mere contentions, deductions, or conclusions of law. [Citation.] We then determine if those facts are sufficient, as a matter of law, to state a cause of action under any legal theory." (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1052 (*Intengan*).) "In making this determination, we also consider facts of which the trial court properly took judicial notice," and a "demurrer may be sustained where judicially noticeable facts render the pleading defective." (*Ibid.*)

To prevail on appeal, the appellant must show that the pleaded facts are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer; we will therefore affirm the ruling if there is any ground on which the demurrer could have been properly sustained. (*Intengan, supra,* 214 Cal.App.4th at p. 1052.)

A. First Cause of Action: Intentional Interference with Contract

To state a cause of action for intentional interference with a contractual relationship, Allen had to plead (1) a valid contract between Allen and a third party; (2) respondents' knowledge of the contract; (3) respondents' intentional acts designed to induce a breach or disruption of the contractual relationship; (4) an actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55.)

The allegations of Allen's first amended complaint do not state a cause of action, for multiple reasons. First, Allen did not allege that she had a contract with a third party. Although she alleged that "a *quasi-contract* exists between herself and unknown principal who funded her loan," she provides no legal authority for the proposition that a quasi-contract can be the basis for the tort of interference with contractual relations. **A *quasi*-contract is not a contractual relationship. It is a contract implied by law, after the fact, to allow for compensation to an unpaid provider of goods or services, usually on the basis of quantum meruit, to avoid unjust enrichment.**

Second, Allen does not provide legal authority for the proposition that a quasi-contract actually arose between Allen and the unidentified entity that purportedly funded her loan. As clarified in her reply brief, Allen is attacking the practice of "**table-funding," by which a mortgage loan is**

funded at settlement by an advance of loan funds from a third party, with a contemporaneous assignment of the loan to the third party advancing the funds. (See *Akopyan v. Wells Fargo Home Mortgage, Inc.* (2013) 215 Cal.App.4th 120, 152-153; *Easter v. American West Financial* (9th Cir. 2004) 381 F.3d 948, 955 **["In a table-funded loan, the originator closes the loan in its own name, but is acting as an intermediary for the true lender, which assumes the financial risk of the transaction."**].) **In table-funding, there is no unjust enrichment: the borrower purchases the property using someone else's funds and makes payments as directed, and the party who advanced the funds is ultimately repaid.**

Third, even if table-funding could result in a quasi-contract between the borrower and the entity that actually advanced the funds, Allen fails to allege facts sufficient for the inference that her loan was, in fact, table-funded. She does not allege that there was an assignment of the loan to the unidentified entity that supposedly advanced the funds.

Fourth, even if Allen had alleged a quasi-contract, she has not alleged facts showing that respondents *knew* about it. Allen alleges that "Defendants were all aware of the existing contract as a public record giving all Defendants notice of the contract." But **a quasi-contract is not in a public record, and the document to which Allen refers is the deed of trust, which does not suggest any quasi-contract, but reflects Allen's obligation to make payments to the *named* Lender — SCME — and its successors and assigns.**

Fifth, even if Allen had alleged a quasi-contract that respondents knew about, she failed to allege facts demonstrating that respondents *interfered* with the quasi-contract in a manner that *harmed* her. Respondents obviously did not prevent the unidentified advancer of funds from advancing the funds, since Allen received the money to purchase the property. **There is no allegation that the unidentified advancer of funds ever required Allen to repay the funds, so there can be no cognizable allegation that respondents prevented Allen from performing (paying).** Indeed, Allen has not been held liable for failing to perform under the quasi-contract, and it was not on the basis of the quasi-contract that her property was sold. To the contrary, Allen's legal obligations to the *named* lender remained **even if her loan was table-funded, and her property was sold because she failed to make the payments she had explicitly promised to make to that named lender or its assigns.** (See *Marquez v. Select Portfolio Servicing,*

Inc. (N.D. Cal. Mar. 16, 2017, No. 16-cv-03012-EMC) 2017 WL 1019820 (*Marquez*) [**alleged table-funding did not preclude consummation of the loan or render the deed of trust void or the loan transaction illegal, even though it was not disclosed to borrower**]; *Romero v. U.S. Bank, N.A.* (N.D. Cal. Oct. 7, 2016, No. 16-cv-02286-MMC) 2016 WL 5870004 (*Romero*) [**allegation of quasi-contract with entity that actually funded the loan did not support a claim for interference with contract**].) **Allen's allegations that Nationstar disrupted her "ability to perform her [contractual] obligations," relied upon the assignment of the deeds of trust, and "prevented [her] from: paying the party who was actually entitled to her monthly payments, negotiating with an actual beneficiary or stopping the imminent sale because [Nationstar was] never in privity with [her] [quasi-]contract," are all ineffective as a matter of law.**

For each of these reasons, the trial court did not err in sustaining the demurrer as to Allen's first cause of action.

B. Second Cause of Action (Civil Code § 2924.17)

Civil Code section 2924.17, subdivision (a) provides that a "notice of default, notice of sale, assignment of a deed of trust, or substitution of trustee recorded by or on behalf of a mortgage servicer in connection with a foreclosure . . . shall be *accurate and complete and supported by competent and reliable evidence*." (Italics added.)[1] **Section 2924.17, subdivision (b) provides that a mortgage servicer, before recording any of these documents, "shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information."**

The allegations of the first amended complaint do not give rise to an inference that the assignment of the deed of trust from MERS to BANA, or the assignment of the deed of trust from BANA to Nationstar, were not "accurate and complete and supported by competent and reliable evidence," or that respondents otherwise violated section 2924.17. In this regard, Allen makes several arguments, all of which are utterly devoid of merit.

1. The Lender (SCME) Obtained an Assignable Interest

Allen suggests that the assignments are deficient because the loan contract and deed of trust were void. Not so. Assuming there was an unidentified lender who advanced the loan funds, neither an allegation of this fact nor an

allegation of its concealment from the borrower shows that SCME failed to obtain its interest as indicated in the deed of trust, or that SCME's right to receive Allen's mortgage payments were not passed by MERS's assignment of the deed of trust to BANA, and by BANA's assignment of the deed of trust to Nationstar. (E.g., *Marquez, supra,* 2017 WL 1019820 [**alleged table-funding did not render deed of trust void or loan transaction illegal, even though it was not disclosed to borrower**]; *Romero, supra,* 2016 WL 5870004 **[BY SIGNING THE DEED OF TRUST, THE BORROWER ACKNOWLEDGED THAT THE NAMED LENDER WAS THE LENDER AND GAVE IT THE POWER TO FORECLOSE, AND THEREFORE CANNOT CLAIM THAT THE LENDER NEVER OBTAINED AN INTEREST IN THE DEED OF TRUST OR THAT ITS SUCCESSORS AND ASSIGNS COULD NOT OBTAIN AN INTEREST**].)[2]

2. MERS Had Authority to Assign the Deed of Trust

Allen contends that MERS, the beneficiary named in her deed of trust, lacked authority to assign the deed of trust to BANA. Again, she is incorrect. Allen's deed of trust expressly authorized MERS to exercise all of the lender's rights and interests. **The deed of trust broadly stated: "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 [GRANTED BY BORROWER IN THE DEED OF TRUST], INCLUDING, BUT NOT LIMITED TO, *THE RIGHT TO FORECLOSE AND SELL THE PROPERTY*; and to take any action required of Lender." This authority "necessarily includes the authority to assign the deed of trust."** (*Siliga v. Mortgage Elec. Reg. Sys. Inc.* (2013) 219 Cal.App.4th 75, 83-84 (*Siliga*), disapproved on another ground in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939 fn. 13 (*Yvanova*).)

3. Lender SCME's Dissolution

Allen argues that MERS's authority to act as the lender's nominee or agent ended when the lender (SCME) dissolved in 2007. However, **her deed of trust expressly designated MERS as the beneficiary, and as nominee not only for the "Lender" but also for the "Lender's *successors and assigns.*"** (Italics added.) MERS therefore had authority to serve as the beneficiary in a nominee capacity for SCME's successors and assigns —

BANA and Nationstar. (See, e.g., *Ghuman v. Wells Fargo Bank, N.A.* (2013) 989 F.Supp.2d 994, 1002 ["**courts have generally given the nominee of a lender broad powers to act, with or without consent from the lender" and there is "no authority to suggest this power is affected when a lender becomes defunct"**].)

4. Failure to Disclose Principal/Statute of Frauds

Allen argues that the assignment of her deed of trust from MERS to BANA was invalid under the statute of frauds (§ 1624) because the assignment did not disclose the principal for whom the signatories or MERS was acting, and MERS's authorization to act was not in writing. Her argument is meritless.

In the first place, Allen has no standing to attack the assignments on this ground. **A "CONTRACT NOT EXECUTED IN CONFORMITY WITH FORMALITY REQUIRED BY THE STATUTE OF FRAUDS IS NOT *VOID* BUT MERELY *VOIDABLE.*"** (*Coleman v. Satterfield* (1950) 100 Cal.App.2d 81, 84; *Masin v. Drain* (1984) 150 Cal.App.3d 714, 717.) **A borrower lacks standing to challenge an assignment that is merely voidable.** (*Yvanova, supra,* 62 Cal.4th at pp. 936-942; *Kalnoki v. First American Trustee Servicing Solutions, LLC.* (2017) 8 Cal.App.5th 23, 43.)

Moreover, Allen fails to allege a violation of the statute of frauds, which provides that **certain contracts are invalid "unless they, or some note or memorandum thereof, are in *writing* and *subscribed* by the party to be charged or by the party's agent."** (§ 1624, italics added.)

In part, Allen suggests that the assignment of the deed of trust, although in writing, was not property subscribed by the party to be charged or the party's agent. Specifically, she contends the statute "requires an agent signing on behalf of a principal to disclose the agency relationship and identify the agency relationship and identify the principal on whose behalf it is acting," and nowhere in the assignments did the BANA or Recontrust employee state on whose behalf they were acting, or on whose behalf MERS was acting.

Allen is incorrect. The signatories of the assignments did disclose for whom they were signing. Ben Peck signed the October 2011 assignment as Assistant Secretary for MERS, and Loryn Stone signed the February 2012 assignment as "Asst Secretary" for MERS. And **there was no necessity for MERS to disclose on whose behalf it was acting, because it was exercising its own powers under the deed of trust**.[3]

Allen further argues that MERS's (or the individual's) *authorization* to assign the deed of trust was not in writing. However, the statute of frauds does not require the authorization to be in writing. Subdivision (a)(4) of section 1624 provides that "[a]n agreement authorizing or employing an agent, broker, or any other person to *purchase or sell real estate*" must be in writing, but **A DEED OF TRUST ASSIGNMENT IS NOT AN AGREEMENT FOR THE PURCHASE OR SALE OF REAL PROPERTY**. (See *Lupertino v. Carbahal* (1973) 35 Cal.App.3d 742, 748 [**deed of trust carries no incident of property ownership other than right to convey upon debtor's default**].)

Allen also contends that, if a person signs a deed for a grantor, the grantor's authorization to do so must be in writing under section 2309. (See § 2309 ["authority to enter a contract required by law to be in writing can only be given by an instrument in writing"].) But **THE ASSIGNMENT OF A DEED OF TRUST IS NOT A DEED EXECUTED ON BEHALF OF A GRANTOR**. (See also *Siliga, supra,* 219 Cal.App.4th at p. 84 [**lender's nominee did not need written authorization to assign note and deed of trust**].) At any rate, even if the employees' authorization to sign the assignments had to be in writing, the first amended complaint fails to allege facts showing that no such writing exists.

5. Self-to-Self Transfer

Allen argues that MERS's assignment of her deed of trust to BANA was invalid because the assistant secretary of MERS who signed it was also a BANA employee. Allen contends this makes the assignment an impermissible "self-to-self" transfer from BANA to BANA. (Citing *Riddle v. Harmon* (1980) 102 Cal.App.3d 524, 528 [noting another court's proposition that "`a transfer of property presupposes participation by at least two parties, namely, a grantor and a grantee,'" and "`they cannot be the same person,'" but then proceeding to reject that proposition].)

Allen is incorrect. Bank employees typically sign as officers or employees of MERS. As explained by the Ninth Circuit Court of Appeals: **"MERS RELIES ON ITS *MEMBERS* TO HAVE SOMEONE ON THEIR OWN STAFF BECOME A MERS OFFICER WITH THE AUTHORITY TO SIGN DOCUMENTS ON BEHALF OF MERS.** [Citations.] As a result, **most of the actions taken in MERS's own name are carried out by staff at the companies that sell and buy the beneficial interest in the loans."**

(*Cervantes v. Countrywide Home Loans, Inc.* (9th Cir. 2011) 656 F.3d 1034, 1040.) Furthermore, "[a] dual agency role of an individual employed by a mortgage company and signing on behalf of MERS is a necessary consequence of this system rather than an indication of any impropriety. Accordingly, **the FACT THAT [AN INDIVIDUAL] MAY HAVE BEEN THE SIGNATORY ON MULTIPLE MORTGAGE AND FORECLOSURE RELATED DOCUMENTS IN DIFFERENT ROLES DOES NOT IMPACT THE VALIDITY OF ANY OF THOSE DOCUMENTS."** (*Halajian v. Deutsche Bank Nat. Trust Co.* (E.D. Cal. Jan. 9, 2015, No. 1:12-cv-00814-AWI-GSA) 2015 WL 139703, at *3, citation omitted.)

Here, the BANA employee signed the assignment in the role of a MERS officer, not in the role of a BANA employee. And the rights that MERS assigned to BANA were the rights of MERS, not BANA. (See *Herrera v. Federal National Mortgage Association* (2012) 205 Cal.App.4th 1495, 1504, disapproved on another ground in *Yvanova, supra,* 62 Cal.4th at p. 939, fn. 13; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1157-1158.) There was no impermissible self-to-self transfer or assignment.

6. Assignment from BANA to Nationstar

Allen challenges the 2013 assignment from BANA to Nationstar on the ground that Deutsche Bank owned her loan at the time, pointing to an April 2012 letter in which BANA advised Allen that the owner of her debt was Deutsche Bank. However, even if the debt had already been transferred to Deutsche Bank, **the deed of trust could still be assigned to Nationstar as *loan servicer.***

As the record indicates, **Nationstar was assigned the deed of trust in its role as loan servicer and agent *for* Deutsche Bank, the loan's owner**. (In fact, the BANA letter identifying Deutsche Bank as owner of the loan also informed Allen that payments and most inquiries and requests should be directed to the loan servicer, not Deutsche Bank.) **"Institutional purchasers of loans in the secondary mortgage market often designate a third party, not the originating mortgagee, to collect payments on and otherwise `service' the loan for the investor**. In such cases the promissory note is typically transferred to the purchaser, but an assignment of the mortgage from the originating mortgagee to the servicer may be executed and recorded. This assignment is convenient because it facilitates actions

that the servicer might take, such as releasing the mortgage, at the instruction of the purchaser. The servicer may or may not execute a further unrecorded assignment of the mortgage to the purchaser. It is clear in this situation that the owner of both the note and mortgage is the investor and not the servicer." (Rest.3d Property: Mortgages § 5.4, cmt. c, illus. 7, p. 384; see *In re Montierth* (Nev. 2015) 354 P.3d 648, 651; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 273, disapproved on another ground in *Yvanova, supra,* 62 Cal.4th 919.) The assignment to Nationstar gave it authority to initiate the foreclosure on behalf of the owner, Deutsche Bank.

The trial court did not err in sustaining the demurrer to the second cause of action.

C. Third Cause of Action for Intentional Misrepresentation

"**The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage."** (*Chapman v. Skype* (2013) 220 Cal.App.4th 217, 230-231.)

Allen alleged that defendants are responsible for "false" statements appearing in the recorded instruments. As discussed ante, however, Allen did not allege facts leading to a reasonable inference that the assignments from MERS to BANA and from BANA to Nationstar contained an inaccuracy or were otherwise false. She therefore fails to allege an actionable misrepresentation on that basis. (See also *Marquez, supra,* 2017 WL 1019820 [**alleged table-funding did not render deed of trust void or loan transaction illegal, even though it was not disclosed to borrower**].)

Furthermore, Allen fails to allege resulting damage. **Her property was not sold because of any false statement in the recorded instruments (or because the loan was table-funded, or because the table-funding was not disclosed), BUT BECAUSE SHE DID NOT MAKE THE PAYMENTS ON HER MORTGAGE**. The trial court did not err in sustaining the demurrer as to the third cause of action.

D. Fourth Cause of Action for Wrongful Foreclosure

The elements of a cause of action for wrongful foreclosure 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 . . . 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 (*Miles*).)

As to the first element, Allen fails to allege an illegal, fraudulent, or willfully oppressive sale of her real property. In her first amended complaint, she asserts that defendants falsely claimed an interest in the note and deed of trust and used false statements in the recorded instruments to pursue the foreclosure. As explained ante, however, the facts alleged in the first amended complaint and subject to judicial notice preclude that conclusion. (See also *Grieves v. MTC Financial Inc.* (N.D. Cal., July 25, 2017, No. 17-CV-01981-LHK) 2017 U.S. Dist. Lexis 116458 [**no wrongful foreclosure claim based on theory that loan was table-funded and deed of trust was void, because no authority that remedy would be a cancellation of the deed of trust**]; *Palmer v. MTC Financial Inc.* (E.D. Cal., May 26, 2017, No. 1:17-cv-00043-DAD-SKO) 2017 U.S. Dist.Lexis 81371 [**no claim for wrongful foreclosure or cancellation of instruments on ground that deed of trust was invalid and the product of illegal table-funding**].)

In her opening brief in this appeal, Allen contends the entity entitled to enforce the debt (pursuant to the recorded instruments) was Nationstar, but the entity that foreclosed was Deutsche Bank. She urges that this was wrongful, because only those with authority to foreclose on a borrower are permitted to do so. (Citing *Yvanova, supra,* 62 Cal.4th at p. 938; *Sciarratta v. U.S. Bank, National Association* (2016) 247 Cal.App.4th 552, 562.) As explained ante, however, the record shows that Deutsche Bank became owner of the debt by April 2012 and Nationstar was assigned the deed of trust as Deutsche Bank's loan servicer and agent in September 2013. Her allegations do not lead to an inference that those who foreclosed lacked authority to do so. Her reliance on *Sciarratta* is accordingly misplaced.

As to the element of tender, Allen failed to allege a tender, an offer to tender, or any excuse for not tendering payment of her secured debt. Her first amended complaint therefore fails to state a cause of action for that reason as well. (See *Miles, supra,* 236 Cal.App.4th at p. 408.)

The court did not err in sustaining the demurrer as to the fourth cause of action.

E. Fifth Cause of Action (Section 2923.55)

Allen's fifth cause of action sought to allege a claim for violation of section 2923.55. Allen's opening brief in this appeal does not address this cause of action. Issues not raised in the opening brief are waived and abandoned. (See *Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1282.)

F. Leave to Amend

The trial court did not abuse its discretion in denying leave to amend. Allen filed no opposition to respondents' demurrer until after the demurrer hearing, and she did not challenge the tentative ruling that sustained the demurrer with prejudice. In her opening brief in this appeal, she contends that certain exhibits show facts to support her intentional misrepresentation claim and tortious interference claim, and that she could further amend her pleading to name BANA as a defendant and add claims for cancellation of instruments and slander of title. She fails to demonstrate that her proposed amendments to her first amended complaint would state any cognizable cause of action.

G. Continuance

Allen contends the trial court should have continued the demurrer hearing so it could consider the opposition that she failed to timely file, rather than affirming its tentative ruling after the hearing. But Allen did not advise the court that she was even going to contest the tentative ruling, and when her attorney nevertheless appeared for the hearing, he did not ask for any continuance. Allen fails to demonstrate an abuse of discretion. At any rate, we have reviewed the opposition that Allen belatedly filed, and it is clear that she would not have been entitled to a more favorable outcome if the hearing had been postponed and the opposition had been fully considered.

III. DISPOSITION

The judgment is affirmed.

JONES, P.J. and BRUINIERS, J., concurs.

[1] Unless otherwise indicated, all statutory references are to the Civil Code.

[2] Allen contends in her reply brief that her contract with SCME was void due to illegality, because table-funding is unlawful in California. (See Bus. & Prof. Code § 10234 [authorizing Department of Real Estate to regulate table loans]; Cal. Code Regs., tit. 10, § 1460 [as to loans made by a finance company under Financial Code §§ 22340 and 22600, the finance company must be the lender on the note and the beneficiary on the deed of trust and provide the funding].) Even if a finance company is prohibited from engaging in table funding, however, **THE ACT OF TABLE-FUNDING DOES NOT VOID THE LOAN CONTRACT OR DEED OF TRUST**. (E.g., *Marquez, supra,* 2017 WL 1019820; *Grieves v. MTC Financial Inc.* (N.D. Cal., July 25, 2017, No. 17-CV-01981-LHK) 2017 U.S. Dist. Lexis 116458; *Palmer v. MTC Financial Inc.* (E.D. Cal., May 26, 2017, No. 1:17-cv-00043-DAD-SKO) 2017 U.S. Dist.Lexis 81371.)

[3] Allen's reliance on *McNear v. Petroleum Export Corp.* (1929) 208 Cal. 162 is misplaced. In *McNear,* the court held there was no contract between a buyer and a seller because the order had been signed by the broker in his own name, and he did not purport to be an agent or make any offer of proof he had the authority to bind his principal. Here, by contrast, the assignment from MERS to BANA was signed by an individual as the agent of MERS.