TUYEN DUC NGUYEN, Plaintiff and Appellant,
v.
HSBC BANK USA, N.A., as Trustee, etc., et al., Defendants and Respondents.

Nos. G053536, G053842, G054135.

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

Filed February 26, 2018.

Appeal from judgments and an order of the Superior Court of Orange County, Super. Ct. No. 30-2015-789809, Mary Fingal Schulte, Judge. Affirmed. Request for judicial notice granted in part and denied in part.

Tuyen Duc Nguyen, in pro. per., for Plaintiff and Appellant.

McGuireWoods and Leslie M. Werlin for Defendants and Respondents HSBC Bank USA, N.A., as Trustee for the Certificateholders of Nomura Home Equity Loan Inc. Asset-Backed Certificate Series 2005 FMI, Bank of America, N.A., MERSCORP Holdings, Inc. and Mortgage Electronic Registration System, Inc.

McCarthy & Holthus, Melissa Robbins Coutts and Matthew B. Lerned for Defendant and Respondent Quality Loan Service Corporation.

Green & Hall, John T. Griffin and Stephanie M. Stringer for Defendant and Respondent Southland Homes Real Estate and Investment, LLC.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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OPINION

THOMPSON, J.

Plaintiff Tuyen Duc Nguyen appeals from judgments and an order of dismissal entered after the court sustained without leave to amend demurrers to the second amended complaint (SAC) filed by of HSBC Bank USA, N.A., as trustee for the Certificateholders of Nomura Home Equity Loan Inc. Asset-Backed Certificate Series 2005 FMI (HSBC), Bank of America, N.A. (BofA), MERSCORP Holdings, Inc. (MERSCORP), and Mortgage Electronic Registration System, Inc. (MERS; HSBC demurrer); Quality Loan Service Corporation (Quality; Quality demurrer); and Southland Homes Real Estate and Investment, LLC (Southland; Southland demurrer). Couched in causes of action for declaratory judgment, unlawful foreclosure, and quiet title, the SAC essentially alleges defendants wrongfully foreclosed because a note and trust deed executed by plaintiff were transferred to a securitized trust after the closing date, making the assignment void.

Plaintiff asserts the issue is whether a borrower has standing to challenge an alleged defective assignment of a note and deed of trust in a wrongful foreclosure. He argues the late assignment made it void, the language in the deed of trust gave him standing, the deed of trust is an adhesion contract, he need not be in privity to challenge the assignment, and the California Homeowners Bill of Rights (Civ. Code, § 2923.5 et seq.; (HBOR) was violated; all further undesignated statutory references are to the Civil Code) gives him standing.

Finding none of these arguments persuasive, we affirm.

REQUEST FOR JUDICIAL NOTICE

Plaintiff filed a request for judicial notice of 16 documents. We grant the request (in which HSBC joined) as to the assignment of deed of trust. We deny it as to the remaining documents. All but two of the remaining documents are already in the clerk's transcript, as plaintiff notes in the request. The other two, a notice of rescission of a notice of default and a notice of related case, are not relevant.

FACTS AND PROCEDURAL HISTORY

In 2005 plaintiff borrowed just under $450,000 to purchase real property (Property) in Garden Grove. He executed a note (Note) secured by a trust deed (Trust Deed) in favor of Fremont Investment & Loan as lender (Lender) and MERS as beneficiary, "acting solely as a nominee for Lender and Lender's successors and assigns."

In 2008 plaintiff defaulted on the Note by failing to make the monthly payments. On May 2011 MERS executed and recorded an assignment of the Trust Deed (Assignment) to HSBC. On May 11, 2011, ReconTrust Company (ReconTrust) recorded a Notice of Default and Election to Sell (NOD1).

In December 2014 Quality was substituted in as trustee. A few days later it recorded a Notice of Default and Election to Sell (NOD2). In May 2015 Quality recorded a Notice of Trustee's Sale with a sale date of May 27. On that date, Southland purchased the Property and a Trustee's Deed Upon Sale was recorded.

Subsequently, Southland filed an unlawful detainer action against plaintiff. Ultimately Southland acquired possession of the Property on the grounds it was a bona fide purchaser for value (BFP) at the foreclosure sale.

On May 28, 2015 plaintiff filed a complaint against HSBC, BofA, MERSCORP, MERS, Quality, and other defendants, but not Southland, for "Lack of Standing to Foreclose," quiet title, slander of title, and declaratory and injunctive relief. In October plaintiff filed a first amended complaint (FAC) against HSBC, BofA, MERSCORP, MERS, Quality, and Southland (defendants) for declaratory judgment, unlawful foreclosure, quiet title, slander of title, fraud, equitable estoppel, unfair business practices, declaratory and injunctive relief, and an accounting. HSBC, BofA, MERSCORP, and MERS, on the one hand, and Quality on the other filed demurrers. They were sustained with limited leave to amend.

In January 2016 plaintiff filed the second amended complaint (SAC) for declaratory judgment, unlawful foreclosure, and quiet title, seeking to cancel the Assignment and the foreclosure documents, set aside the foreclosure sale, quiet title in plaintiff's name, plus $1 million in compensatory damages and unstated punitive damages. All of the defendants demurred again.[1]

The court sustained all three demurrers without leave to amend. As to the HSBC and Quality demurrers the court ruled the SAC violated the minute order that generally sustained demurrers without leave to amend to the FAC. That ruling gave plaintiff only the limited right to amend to add a new cause of action for violation of the HBOR and to amend the unfair business practices cause of action but only if plaintiff could allege actual injury and "more specific facts." Plaintiff had no right to amend other than as allowed

by that ruling. The court noted plaintiff had alleged basically the same facts pleaded in the prior complaints.

The court ruled plaintiff's claim in his opposition to the demurrer that his complaint was allowed under *Glaski v. Bank of America* (2103) 218 Cal.App.4th 1079 (*Glaski*) and Y*vanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919 (*Yvanova*) was actually a motion for reconsideration in light of *Yvanova,* published just after the ruling on the demurrers to the FAC. The court, on its own motion, elected to reconsider its prior ruling in light of *Yvanova.*

The court ruled *Yvanova* did not affect its previous order. *Yvanova* held only that a borrower "does not lack standing to sue for wrongful foreclosure based on allegedly void assignment merely because he or she was in default on the loan and was not a party to the challenged assignment." (*Yvanova, supra,* 62 Cal.4th at p. 924.)

The court ruled plaintiff had no standing to challenge the Assignment because, assuming the allegations were true, the Assignment would only be voidable, not void. Where an assignment is only voidable, the obligor has no right to challenge the transfer.

As to Southland, the court stated it had already ruled the SAC did not allege a valid claim that the Assignment and trustee's sale were void as a matter of law, and noted it had sustained the HSBC demurrer and Quality demurrer without leave to amend. The court ruled Southland was a BFP, not a party to the loan agreements or a financial institution, and not involved in instituting foreclosure. Thus, it was not liable for any defects in either the loan or foreclosure, taking the Property "free from any equities existing between the original parties." In addition the unlawful detainer judgment "conclusively established" title and plaintiff could not allege to the contrary. Further, plaintiff had not alleged tender. Finally, the causes of action were uncertain and "fatally flawed."

Judgments were entered in favor of HSBC, BofA, MERSCORP, MERS, and Southland. A signed order dismissing the SAC with prejudice was entered in favor of Quality. (Code Civ.Proc., § 581d [signed order of dismissal is appealable].)

DISCUSSION

1. Introduction

Before we proceed to the merits of the appeal, we need to address some preliminary matters, including the scope of the appeal. As noted, in ruling on the demurrers to the FAC, the court granted plaintiff a limited right to amend, to allege a new cause of action for violation of the HBOR and to amend the unfair business practices cause of action only. Instead, the SAC merely eliminated certain of the causes of action in the FAC, including the unfair business practices claim, but repleaded three causes of action, wrongful foreclosure, quiet title, and declaratory relief. The allegations in these causes of action were quite similar to those in the FAC. A few allegations regarding the HBOR were added.

Plaintiff had no right to file the SAC in that form. After an order sustaining a demurrer with leave to amend, "the plaintiff may amend his or her complaint only as authorized by the court's order." (*Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.) Despite this violation, the court considered plaintiff's opposition to the demurrers to the SAC on the merits, but limited to whether *Yvanova, supra,* 62 Cal.4th 919 dictated a different result, finding it did not.

Thus, our review normally would be limited to whether the court erred in making that ruling, not to the myriad of other arguments plaintiff raised in his briefs. Plaintiff disagrees, arguing he has the right to raise new theories because he is seeking leave to amend.

Plaintiff did not present his arguments in the context of how he would amend his complaint but rather in support of his claim the SAC was sufficient as pleaded. He adopted an everything-but-the-kitchen-sink approach, making scattershot arguments that sometimes had only the most remote connection to the issues at hand.

Further, **many of his arguments make no sense. It appears plaintiff has liberally borrowed and perhaps copied and pasted from other briefs or arguments in cases that, while they might touch on foreclosure or assignment issues, are not on point here or have been rejected by case authority.** For example, in his reply brief, plaintiff claims "this Court reframed the crucial questions in this case by drafting a single issue presented." He goes on to state "this Court granted review not just to resolve

a dispute between the parties, but to set down public policy on crucial issues in foreclosure law." We have taken no such actions.

These statements seem to have come from a brief on an appeal to the Supreme Court. We neither grant review nor frame issues. And our job in this appeal is not to set down public policy but to review the propriety of the trial court's ruling.

Nevertheless, to the extent an argument could be construed to pertain to amending the complaint we will consider it in that context. As to those arguments we cannot understand and those not supported by reasoned legal argument, they are forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Plaintiff's argument his lack of legal training and experience "should not be held against him now that he has experienced counsel, who has argued the crucial facts and the key legal theories in the opening brief" is problematic on at least two grounds. First, he has appeared in propria persona, not by counsel. Second, **a self-represented litigant is not entitled to "special treatment"** (*Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 524) **but is held to the same standards as a party represented by counsel** (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [the appellant's issues forfeited due to defects in opening brief]). In any event, as discussed below plaintiff's arguments have no merit no matter who made them.

2. Standard of Review

We review a judgment after order sustaining a demurrer without leave to amend de novo. (*Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 178.) "`[W]e treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law'" (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 43) or speculative allegations (*Rotolo v. San Jose Sports & Entertainment, LLC* (2007) 151 Cal.App.4th 307, 318, disapproved on another ground in *Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 333, 334, fn. 15).

"Under the doctrine of truthful pleading, the courts `will not close their eyes to situations where a complaint contains allegations of facts inconsistent with attached documents, or allegations contrary to fact

which are judicially noticed.'" (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400; see *Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761, 767 **["[w]hile the `allegations [of a complaint] must be accepted as true for purposes of demurer,' the `facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence'"**].)

We review a decision to disallow leave to amend for abuse of discretion. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 (*Schifando*).)

3. Standing to Challenge Foreclosure

To state a valid cause of action for wrongful foreclosure, quiet title, or declaratory relief, plaintiff had to have standing to challenge the foreclosure. As we explain below, he had no standing. This disposes of any claim against HBSC. As to the other defendants, liberally construing the SAC, potentially there are other issues, which we will discuss separately.

a. Voidable Assignment

Plaintiff claims he has standing to challenge foreclosure based on a variety of theories. The SAC alleged defendants had no standing to foreclose on the Property based on the alleged void Assignment. According to the SAC, the closing date for assignment under the pooling and servicing agreement (PSA) was September 2005. The SAC also alleged the PSA required the Assignment to be recorded within 90 days after assignment. It further alleged the Assignment was not made until January 2012.[2]

The SAC pleaded the Assignment was ineffective, and thus defective, because HSBC could not have accepted it after the closing date. Plaintiff also pleaded on information and belief the Note was never actually transferred, also allegedly interfering with defendants' standing to foreclose. The SAC alleged there was a "gap in the legal chain of title" requiring defendants to prove standing to foreclose.

Even assuming the Assignment was transferred late, plaintiff has no standing to challenge it. *Yvanova, supra,* 62 Cal.4th 919 considered the same claim plaintiff makes here, i.e., an assignment of a trust deed was void because not transferred until after the closing date of the securitization trust.

As the trial court noted, *Yvanova* held where an alleged defective transfer renders an assignment void, a borrower has standing to sue for wrongful foreclosure. (*Yvanova,* at pp. 942-943.)

But where an assignment is merely voidable, it does not support a wrongful foreclosure action. "**California law does not give a party personal standing to assert rights or interests belonging solely to others.**" (*Yvanova, supra,* 62 Cal.4th at p. 936.) **Plaintiff was not a party to the PSA.**

***Yvanova* specifically did not decide whether, under New York law, a late transfer of a deed of trust to an investment trust is void or voidable.** (*Yvanova, supra,* 62 Cal.4th. at pp. 940-941.)

Only one California case has held that a late assignment to a securitization trust is void, *Glaski, supra,* 218 Cal.App.4th at page 1097, which plaintiff cites. But **THE CASE ON WHICH *GLASKI* RELIED TO CONCLUDE THE ASSIGNMENT WAS VOID WAS SUBSEQUENTLY REVERSED**. (*Wells Fargo Bank, N.A. v. Erobobo* (N.Y.App.Div. 2015) 127 A.D.3d 1176, 1178; see *Rajamin v. Deutsche Bank Nat'l. Trust Co.* (2d Cir. 2014) 757 F.3d 79, 88-89 [**weight of authority states failure to comply with a pooling and servicing agreement renders assignment merely voidable by trust beneficiary**].)[3]

And ***GLASKI* HAS BEEN REJECTED BY MOST IF NOT ALL CALIFORNIA COURTS TO CONSIDER THE ISSUE**. (E.g., *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 811-814; *Yhudai v. IMPAC Funding Corp.* (2016) 1 Cal.App.5th 1252, 1258-1259 (*Yhudai*); *Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 815, fn. 5 (*Saterbak*).) **Federal courts are in agreement**. (E.g., *Mendoza,* at p. 814 [discussing cases].)

Because a late assignment is merely voidable, plaintiff lacks standing to challenge the Assignment on that ground. (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 43 (*Kalnoki*).)

It does not matter whether plaintiff knew when the Assignment was made. It did not affect his duty to pay the Note.

Nor did defendants have the obligation to prove the validity of the Assignment before foreclosure, as plaintiff argues in reliance on *Cockerell*

v. Title Ins. & Trust Co. (1954) 42 Cal.2d 284. This same claim was raised and rejected in *Yhudai, supra,* 1 Cal.App.5th 1252, **which held such a requirement applies only in a lawsuit, not in a nonjudicial foreclosure, as occurred here**. (*Id.* at p. 1260.)

b. Trust Deed Language

In an alternate argument plaintiff relies on provisions in the Trust Deed to assert standing. He points to language giving the "Lender" the power to foreclose, claiming the trustee lacks that power because it can act for the beneficiary only. Plaintiff then cites the acceleration provision in the Trust Deed, which requires the lender to give notice to the borrower before it accelerates the loan. It goes on to state the notice shall inform the borrower of the "right to bring a court action to assert the non-existence of a default" or any other defense to acceleration and sale. Plaintiff concludes this "clear language" includes the right to allege the "Lender" may not foreclose because the loan was not properly assigned. **Plaintiff is incorrect.**

A similar argument was raised and rejected in *Saterbak, supra,* 245 Cal.App.4th 808. *Saterbak* reiterated the borrower lacked standing to challenge an assignment as being invalid pursuant to the PSA because it was allegedly untimely. (*Id.* at pp. 814, 816.) It went on to state **the provisions in the Trust Deed "do not change [the] standing obligations under California law; they merely give . . . the power to argue any defense the borrower may have to avoid foreclosure."** (*Ibid.,* italics omitted.)

Further, the language in the Trust Deed does not help plaintiff because "his only purported `defense' to foreclosure" is that the Assignment is void, and he cannot rely on that claim. (*Yhudai, supra,* 1 Cal.App.5th at p. 1260.)

c. Adhesion Contract

In another alternate argument plaintiff claims the Trust Deed is an adhesion contract and, as such, must contain clear or conspicuous language barring him from challenging the Assignment. Because it does not, plaintiff concludes he has such a right. **Again plaintiff is incorrect.**

Saterbak, supra, 245 Cal.App.4th 808, rejected a similar argument stating, **"`[b]ecause a promissory note is a negotiable instrument, a borrower must anticipate it can and might be transferred to another creditor" [citation], together with the [Trust Deed] securing it.'"** (*Id.* at p. 817.)

THE TRUST DEED PROVIDES THE NOTE AND TRUST DEED CAN BE ASSIGNED WITHOUT NOTICE TO PLAINTIFF. "There is no reasonable expectation from this language that the parties intended to allow [plaintiff] to challenge future assignments made to unrelated third parties." (*Saterbak, supra,* 245 Cal.App.4th at p. 817.) Contrary to plaintiff's assertion, this provision did not have to explain the borrower has no right to challenge an assignment. The language of this provision did not, as plaintiff argues, cut off the borrower's right to challenge an assignment. It had nothing to do with that issue.

Nor are we persuaded the language implies only that the loan servicer will be changed because the provision states there may be such a change.

d. Lack of Privity

Plaintiff argues courts can grant standing to parties not in privity to assert a breach of contract claim. We are not persuaded.

The cases plaintiff cites do not stand for this proposition. Rather, they provide a party to a contract may owe a duty of care to a noncontracting party. (E.g., *Barrera v. State Farm Mutual Automobile Ins. Co.* (1969) 71 Cal.2d 659, 675; *Connor v. Great Western Savings & Loan Assn.* (1968) 69 Cal.2d 850, 865; *Biakanja v. Irving* (1958) 49 Cal.2d 647, 650 (*Biakanja*).)

In *Biakanja, supra,* 49 Cal.2d 647, the court set out six factors to consider in determining whether a duty of care is owed to a party not in privity. (*Id.* at p. 650.) Plaintiff argues they support his right to sue for wrongful foreclosure.

But **"`[a]s a general rule, a financial institution owes no duty of care to a borrower when the institution's involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money.'"** (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 206.) **Foreclosure under a deed of trust after default does not go beyond the normal scope of a lender. Nor does assigning a deed of trust**. Nothing in *Biakanja* supports extending the general rule and creating a duty to properly assign.

e. HBOR

Plaintiff relies on the HBOR,[4] arguing it grants him standing to attack the Assignment. In the SAC plaintiff alleged the foreclosure violated the HBOR

and was invalid because defendants attempted to foreclose without the right to do so, failed to identify the beneficiary or show the beneficiary possessed the properly endorsed Note, and failed to show "duly perfected title."

In his opening brief, plaintiff raises three HBOR sections. He cites section 2924, subdivision (a)(6), which bars recordation of a notice of default by an entity other than the holder of the beneficial interest under the deed of trust, an original or successor trustee or the specified agent of the entity holding the beneficial interest. He also relies on section 2923.55, which imposed various requirements before a notice of default could be recorded, including giving the borrower written notice he may ask for a copy of the note, deed of trust, and any assignment. He further points to section 2924.17, subdivisions (a) and (b), which requires a mortgage servicer to verify that recorded foreclosure documents are "accurate and complete and supported by competent and reliable evidence" and that it has "reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose." He concludes these sections "lay down a strong public policy" requiring a foreclosing party to "have the power to foreclose."

The HBOR gives plaintiff no rights here. The Assignment and the NOD1 were recorded in 2011, before the January 1, 2013 effective date of the HBOR. (§ 2923.4; *Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 21, fn. 2.) The **HBOR IS NOT RETROACTIVE**. (*Saterbak, supra,* 245 Cal.App.4th at p. 818.)

Although the NOD2[5] and Notice of Sale were recorded after the effective date, plaintiff still cannot prevail. His argument defendants violated the HBOR is based entirely on his allegation they had no authority to foreclose because of the alleged defective Assignment. But as stated above, plaintiff has no standing to challenge the validity of the Assignment.[6]

In addition, **although the HBOR provides for money damages for violations of certain sections (§ 2923.12), it does not allow such a remedy for violation of section 2924, subdivision (a). And in any event the HBOR "does not impose a preforeclosure duty on foreclosing entities to demonstrate that they have a right to foreclose."** (*Lucioni v. Bank of America, N.A., supra,* 3 Cal.App.5th at p. 162.)

In a related claim, plaintiff contends the 2012 National Mortgage Settlement imposed on "major servicers of mortgages" an obligation to prove they were

authorized to foreclose. **But he is only an incidental beneficiary of the settlement and has no standing to enforce it.** (*Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 515-516.)

4. No Tender

The general rule requires a party seeking to set aside a foreclosure sale as voidable to tender the amount due. (*Kalnoki, supra,* 8 Cal.App.5th at p. 47.) Although there are exceptions, **i.e., attack on the validity of the underlying debt, where the borrower has a setoff or counterclaim, the trustee's deed is void on its face, or it would be inequitable to require a full tender** (*ibid.*), none of these exceptions is alleged in the SAC. Nor did plaintiff allege a tender. This is fatal to plaintiff's cause of action for wrongful foreclosure, as well as quiet title (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 87), another ground on which to sustain the demurrers.

5. No Prejudice

**"`"[A] plaintiff in a suit for wrongful foreclosure has generally been required to demonstrate the alleged imperfection in the foreclosure process was prejudicial to the plaintiff's interests."'"** (*Kalnoki, supra,* 8 Cal.App.5th at p. 48.) "Prejudice is not presumed from `mere irregularities' in the process." (*Herrera v. Federal National Mortgage Assn.* (2012) 205 Cal.App.4th 1495, 1507, disapproved on another ground in *Yvanova, supra,* 62 Cal.4th at p. 939, fn. 13.)

Here, the only prejudice plaintiff alleged was that he had "suffered harm and the slander of his reputation in that a foreclosure sale." (*Sic.*) This is not sufficient. **PLAINTIFF DID NOT ALLEGE HOW THE IMPROPER ASSIGNMENT PREJUDICED HIM. PLAINTIFF NEVER PLEADED HE WAS NOT IN DEFAULT OR THAT HE DID NOT OWE MONEY. HE DID NOT ALLEGE THE ASSIGNMENT OR FORECLOSURE PROCEEDINGS PREVENTED HIM FROM PAYING THE NOTE OR CURING HIS DEFAULT. HE DID NOT PLEAD ANOTHER POTENTIAL OWNER OF THE NOTE MADE DEMAND ON HIM FOR PAYMENT OR WOULD NOT HAVE FORECLOSED AFTER HIS DEFAULT. INSTEAD, ANY DAMAGES PLAINTIFF SUFFERED WERE DUE TO HIS DEFAULT, NOT SOME PERCEIVED IMPERFECTION IN THE ASSIGNMENT OR**

FORECLOSURE PROCESS. Without prejudice, his cause of action must fail. This is an additional ground on which to sustain the demurrers.

6. MERS and MERSCORP

The SAC names MERSCORP, Inc. and Mortgage Electronic Registration System, Inc. as defendants. It identifies Mortgage Electronic Registration System, Inc. as MERS and alleges only it was "acting solely as nominee for Lender and Lender's successors or assigns and is the beneficiary under that [Trust Deed] by assignment." (Boldface omitted.) The SAC contains no identification of or allegations as to MERSCORP, Inc. or MERSCORP Holdings, Inc. MERSCORP is not listed in any of the loan documents or the foreclosure documents. Based on the lack of any allegations as to MERSCORP, the demurrer was properly sustained.

MERS, as the nominee of Fremont, executed the Assignment that assigned the Trust Deed to HSBC. The Assignment was not attached as an exhibit to the SAC and was alleged in only the most general terms, without mention of MERS.

The opening brief mentions only that MERS was not the Lender and had no power to assign the Note and Trust Deed. This is not correct. The Trust Deed named MERS as the beneficiary, as nominee for Lender and Lender's successors and assigns, and also provided the Note could be sold. **MERS, as the nominee for Lender, had the power to assign the Note.** (*Fontenot, supra,* 198 Cal.App.4th at p. 270.)

Indirectly as to MERS, **the opening brief also states the Assignment was made after Fremont was no longer in existence. This does not invalidate the Assignment**. (*Nationwide Insurance Co. of America v. Brown* (9th Cir. 2017) 689 Fed.Appx. 474, 475 **["The allegation that the original lender had its business charter revoked prior to the challenged assignment does not affect MERS's ability to act as beneficiary under the deed of trust**"].) **There is no allegation MERS did not continue to act as nominee thus retaining all the powers and duties initially granted to it.**

Thus, as to MERS as well, there are no valid claims alleged and the court properly sustained the demurrer.

7. BofA

The only allegations in the SAC as to BofA are that ReconTrust is a division of BofA and BofA through Stewart Title executed a Notice of Trustee's Sale. Neither of these allegations suffices to state a cause of action against BofA and the demurrer was properly sustained.

8. Quality

Quality was the trustee under the Trust Deed. "The trustee of a deed of trust is not a true trustee with fiduciary obligations, but acts merely as an agent for the borrower-trustor and lender-beneficiary." (*Yvanova, supra,* 62 Cal.4th at p. 927.) **"`"The scope and nature of the trustee's duties are exclusively defined by the deed of trust and the governing statutes. No other common law duties exist."'"** (*Biancalana v. T.D. Service Co.* (2013) 56 Cal.4th 807, 819.) **UNDER A DEED OF TRUST A TRUSTEE GENERALLY HAS TWO DUTIES. IF THE BORROWER SATISFIES THE DEBT, THE TRUST MUST RECONVEY TITLE TO THE PROPERTY. IF THE BORROWER DEFAULTS, THE TRUSTEE MUST COMMENCE FORECLOSURE.** (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1491-1492.) As required, Quality commenced foreclosure.

Other than the allegations and issues discussed above, there are no other claims against Quality. Thus Quality's demurrer was properly sustained.

9. Southland

When a buyer purchases property for value, in good faith, and without notice of another's alleged rights, it is a BFP. (*Deutsche Bank National Trust Co. v. Pyle* (2017) 13 Cal.App.5th 513, 521.) Pursuant to section 2924, subdivision (c), "A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice." This presumption is conclusive as to a BFP. (*Moeller v. Lien* (1994) 25 Cal.App.4th 822, 831 (*Moeller*).)

The SAC made no allegations against Southland other than its purchase of the Property at the foreclosure sale. It did not plead the Property sold for less

than value or that Southland acted in bad faith or had notice of plaintiff's claims.[7] The opening brief made no arguments specific to Southland. Southland had nothing to do with the original loan, Assignment, or conduct of the foreclosure proceedings, and none of the claims regarding the alleged void Assignment or violation of the HBOR state a valid claim against Southland. In addition, the Trustee's Deed contained the language set out in section 2924, subdivision (c). By alleging the Trustee's Deed and attaching it to the SAC, plaintiff admitted its terms. (*Vita Planning & Landscape Architecture, Inc. v. HKS Architects, Inc.* (2015) 240 Cal.App.4th 763, 772.)

On that basis, plaintiff has no right to set aside the sale or quiet title as against Southland.[8] (*Moeller, supra,* 25 Cal.App.4th at pp. 831-832.) Although the court granted Southland's demurrer on additional grounds, we need not consider them because this ground suffices. (*Schifando, supra,* 31 Cal.4th at p. 1081 [we must affirm if demurrer can be sustained on any ground raised].)

10. Leave to Amend

To be granted leave to amend, a plaintiff must demonstrate how the complaint could be pleaded to state a valid cause of action. (*Schifando, supra,* 31 Cal.4th at p. 1081.) "`To satisfy that burden on appeal, a plaintiff "must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading." [Citation.] . . . The plaintiff must clearly and specifically set forth the "applicable substantive law" [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary. [Citations]'" (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1491.)

Even with our liberal consideration of new and additional arguments raised in the briefs, plaintiff has not shown that he can validly amend the SAC to state any viable claim. He has had three opportunities to plead a sufficient complaint and even went beyond the scope of permissible amendment granted by the court. He has still been unable to do so. He has not shown he would be successful given another chance.

DISPOSITION

The request for judicial notice is granted as to the Assignment only and otherwise denied. The judgments and order of dismissal are affirmed. Defendants are entitled to costs on appeal.

MOORE, Acting P. J. and FYBEL, J., concurs.

[1] Plaintiff failed to include the HSBC and Quality demurrers in the clerk's transcript.

[2] The Assignment itself shows it was executed on May 10, 2011 and recorded on May 23, 2011, as plaintiff acknowledges in his brief.

[3] Contrary to plaintiff's argument there is no choice of law issue here.

[4] The HBOR contained a sunset provision, effective on January 1, 2018. (*Lucioni v. Bank of America, N.A.* (2016) 3 Cal.App.5th 150, 157.)

[5] The SAC alleged the declaration attached to the NOD2, which stated the mortgage servicer had tried to contact plaintiff per section 2923.5, was the same as the one attached to the NOD1. Under section 2923.5 a notice of default could not be filed until an attempt was made to contact the borrower. The SAC further alleged that because the declaration was "filed" in 2011 before the HBOR became effective, all the foreclosure documents were invalid. This allegation makes no sense. And assuming the two declarations were identical, plaintiff did not allege any facts showing he had not been contacted or that he had been damaged as a result of the duplicate declaration.

[6] Contrary to plaintiff's claim, the HBOR did not overrule *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497 and other cases holding borrowers have no standing to challenge an alleged improper assignment. *Jenkins* was decided after the HBOR went into effect. The HBOR could not overrule a case that had yet to be decided.

Further, again contrary to plaintiff's argument, neither *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149 nor *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, disapproved on another ground in *Yvanova, supra,* 62 Cal.4th at p. 939, fn. 13 (*Fontenot*), held a plaintiff had standing to challenge an alleged late assignment to a securitization trust.

[7] Plaintiff did not record a lis pendens until almost a year after Southland purchased the Property at the foreclosure sale.

[8] This would be true even if there had been some procedural flaw in the foreclosure process, which we do not find. (*Moeller, supra,* 25 Cal.App.4th at pp. 831-832.)