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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**MANUEL A. AND VIRGINIA J.
MADRID,**

Plaintiffs and Appellants,

v.

**SAND CANYON CORPORATION
F/K/A OPTION ONE MORTGAGE
CORPORATION et al.,**

Defendants and Respondents.

A133230

**(Solano County
Super. Ct. No. FCS 037071)**

Manuel and Virginia Madrid appeal from a judgment entered after the trial court sustained respondents' demurrers to their amended complaint without leave to amend. Essentially, appellants argue that they alleged facts sufficient to state causes of action based on the execution, notarization, and recordation of a purportedly forged assignment of a deed of trust to the respondent that pursued foreclosure proceedings against appellants' property. We will dismiss the appeal as to respondent DOCX, LLC, and affirm the judgment as to all other respondents.

I. FACTS AND PROCEDURAL HISTORY

Appellants do not deny that they signed the subject note and deed of trust to purchase their property, and they make no claim that they were fraudulently induced into undertaking the loan or signing those documents. Nor do they dispute that the deed of trust could be assigned to another lender, or that they have failed to make payments under the note and deed of trust. Instead, they contend the assignment of the deed of trust to the

respondent who ultimately foreclosed on their property was forged by respondent DOCX, LLC (DOCX), and that the assignment therefore did not convey any interest in the property and the foreclosure could not lawfully proceed.

A. Background

In May 2007, appellants bought property by borrowing \$815,000 from Option One Mortgage Corporation (Option One), as evidenced by a note and deed of trust recorded against the property. The deed of trust identified Option One as the beneficiary (lender), appellants as the trustor (borrower), and Premier Trust Deed Services, Inc. (Premier Trust) as the trustee, and further provided that the note or a partial interest in the note, along with the deed of trust, could be sold one or more times without prior notice to the borrower.

In August 2008, an Assignment of Deed of Trust was recorded. The assignment purported that American Home Mortgage Servicing, Inc. (AMHSI), now known as Homeward Financial, Inc. (Homeward), was the successor-in-interest to Option One, the original beneficiary under the deed of trust. It further represented that AMHSI was assigning the deed of trust to “Wells Fargo Bank, N.A., as Trustee for the Certificateholders of Soundview Home Loan Trust 2007-OPT2, Asset-Backed Certificates, Series 2007-OPT2” (Wells Fargo). The assignment was signed on AMHSI’s behalf by “Linda Green,” who was identified as “Vice President,” and whose signature was notarized by “Ellis Simmons.”

In September 2009, a Notice of Trustee’s Sale was recorded against the property, asserting that appellants were in default under the May 2007 deed of trust and the property was scheduled to be sold on September 24, 2009. The property was not sold on that date, however.

On February 2, 2010, a Notice of Default and Election to Sell Under Deed of Trust was recorded, asserting that appellants were in default in the amount of \$82,707.33 as of February 9, 2010.

A Notice of Trustee’s Sale, recorded on May 3, 2010, again asserted that appellants were in default under the May 2007 deed of trust, “the total amount of the

unpaid balance of the obligation secured by the above described Deed of Trust and estimated costs, expenses, and advances [was] \$944,172.89,” and the property was set for sale on May 24, 2010.

B. Original Complaint

In December 2010, appellants filed a lawsuit challenging the nonjudicial foreclosure. They sued Option One, AMHSI, Wells Fargo Bank, N.A., DOCX, and Premier Trust. Essentially, they contended that Linda Green, who purportedly signed the assignment of the deed of trust from AMHSI to Wells Fargo on AMHSI’s behalf, was not authorized to do so. Appellants sought a judicial declaration that DOCX, AMHSI, and Wells Fargo had no interest in the property.

Demurrers to the complaint were filed by AMHSI (n/k/a respondent Homeward) and Wells Fargo, as well as by Option One and Premier Trust (n/k/a respondent Sand Canyon Corporation). Before the hearing on the demurrers, appellants filed an amended complaint, and the demurrers were taken off calendar.

C. First Amended Complaint

Appellants’ amended complaint added revelations they gleaned from an April 2011 episode of the television program “60 Minutes,” by which they were “informed and believe” that DOCX signed the assignment to Wells Fargo in the name of Linda Green, and notarized it in the name of Ellis Simmons, but that these names (or signatures) were false.

1. Allegations

Appellants allege that DOCX was formed in 2004 for the purpose of manufacturing fraudulent documents to create the false impression that entities obtained valid, recordable interests in real properties. In particular, DOCX employees would sign someone else’s name on the documents and did not work for the entities on whose behalf they signed. The signatures were then fraudulently notarized by DOCX notaries.

As alleged in the amended complaint, a former DOCX employee stated in a 60 Minutes episode that he signed the name of “Linda Green” on thousands of assignments, made no attempt to determine the legality of the assignments, and was told

by his superiors at DOCX that his signing of the name was lawful. Linda Green stated that she was listed as a vice president of several companies with whom she had no connection, and her name was used on the assignments because it was short and easy to spell. Another former DOCX employee said she notarized the purported signatures of Green, even though the signatures were not Green's, with authorization from DOCX officers.

In May 2007, appellants allege, they signed a first deed of trust in favor of Option One, securing a note of approximately \$815,000. Option One then allegedly sold interests in the deed of trust to other parties as a derivative security, and these parties in turn sold their respective interests to other parties. Appellants allege there are no "lawful records" connecting the property to any respondent other than Sand Canyon (f/k/a Option One, the original beneficiary), whose interest was sold to unrelated third parties.

According to the amended complaint, respondents used DOCX's services to manufacture a fraudulent assignment from AMHSI to Wells Fargo, because Wells Fargo could not find documents that would demonstrate that it owned an interest in appellants' property. Appellants allege, on information and belief, that Wells Fargo never had a lawful interest in the property. Nonetheless, on or about August 7, 2008, at the request of each respondent, DOCX "forged" the assignment with the name "Linda Green," which was signed by an unknown DOCX employee and notarized by "Ellis Simmons." DOCX then sent the assignment to other respondents so that it would be recorded, and respondents caused the assignment to be recorded on August 12, 2008.

Appellants further allege that they "fully tendered all mortgage payments which were lawfully due under the [deed of trust], and that they are not in default of their payments, having lawfully tendered all amounts due and owing." Although Wells Fargo made demands for payment, appellants contend that Wells Fargo was not a lawful holder in due course.

2. Appellants' Purported Causes of Action

On the basis of these allegations, appellants purported to assert six causes of action: (1) slander of title against all defendants; (2) "tortuous" violation of Penal Code

section 470 against all defendants except Premier Trust; (3) notary fraud against DOCX; (4) “cancellation of instrument” against Wells Fargo (seeking cancellation of the assignment); (5) quiet title against all defendants; and (6) declaratory relief against all defendants. Appellants sought monetary damages, cancellation of the assignment, quiet title, and declaratory relief.

3. Respondents’ Demurrers

Separate demurrers to the amended complaint were filed by: AMHSI (n/k/a Homeward) and Wells Fargo as to all causes of action against them; Sand Canyon Corporation (f/k/a Option One and f/k/a Premier Trust) as to all causes of action against Option One and Premier Trust; and DOCX as to all causes of action against it except the claim for slander of title.

4. Trial Court’s Rulings

At the hearing on the AMHSI/Wells Fargo demurrer on July 21, 2011, appellants did not identify any additional facts that would support their claims. To the contrary, appellants’ counsel stated: “I do not have a specific fact that I can put before the Court that is different than what has been pled so far.” By written order dated July 26, 2011, the court sustained the AMHSI/Wells Fargo demurrer without leave to amend. A judgment of dismissal as to AMHSI and Wells Fargo was filed on September 14, 2011.

The court also sustained the demurrer of Sand Canyon (f/k/a Option One and f/k/a Premier Trust) without leave to amend, by written order filed on August 22, 2011. A judgment of dismissal as to Sand Canyon (f/k/a Option One and f/k/a Premier Trust) was entered on August 22, 2011.

The court sustained DOCX’s demurrer without leave to amend as well, by written order filed on August 24, 2011. No judgment was entered as to DOCX, however, because the slander of title claim was still pending against it.

In September 2011, appellants filed a notice of appeal from the judgment “entered on July 21, 2011, August 9, 2011, and all other matters which may be the subject of an appeal.” The dates referenced in the notice of appeal do not, however, refer to the date of any judgment, but to the hearing dates of the AMHSI/Wells Fargo demurrer and the Sand

Canyon and DOCX demurrers. Nonetheless, we will construe the notice of appeal broadly and conclude that the intention was to appeal from the dismissals of AMHSI, Wells Fargo, and Sand Canyon (f/k/a Option One and f/k/a Premier Trust).

As to DOCX, however, appellants' cause of action for slander of title remained pending against DOCX at the time of the notice of appeal. On December 2, 2011, DOCX answered appellants' amended complaint and filed a motion for judgment on the pleadings as to the slander of title claim. Appellants then requested and obtained a voluntary dismissal of the amended complaint as to DOCX, without prejudice, on January 31, 2012.

II. DISCUSSION

Appellants contend the demurrers to their amended complaint should not have been sustained. We first consider DOCX's assertion that the appeal should be dismissed as to DOCX; we then consider appellants' allegations against the remaining respondents.

A. *Appeal as to DOCX*

DOCX argues that appellants' appeal as to DOCX should be dismissed because the order sustaining DOCX's demurrer was not an appealable final judgment. Appellants' do not address this argument in their appellate brief.

Only an appealable final order or judgment may be the subject of a direct appeal. (Civ. Proc. Code, § 904.1.) A judgment is final “ ‘ “when it terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.” ’ ” (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304.)

Here, no judgment of dismissal was entered against DOCX after DOCX's demurrer was sustained. Nor could such a judgment have been validly entered, since DOCX did not demur to the slander of title cause of action, and that cause of action remained in the case as against DOCX. An order disposing of less than all of the causes of action framed by the pleadings is not a final appealable order. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741.)

Although appellants filed a voluntary dismissal of the amended complaint as to DOCX without prejudice after filing their notice of appeal, a voluntary dismissal without prejudice may not be a final judgment appealable on the merits. (*Areso v. CarMax, Inc.* (2011) 195 Cal.App.4th 996, 1001; accord, *Abbati v. Imperial Irrigation Dist.* (2012) 205 Cal.App.4th 650, 662-667 [voluntary dismissal without stipulation may be appealable final judgment; voluntary dismissal pursuant to stipulation facilitating future litigation is not].) DOCX urges that no exception to a general rule of nonappealability applies here, and appellants do not rebut this assertion. In any event, the dismissal occurred after the notice of appeal was filed, and appellants did not file an amended notice of appeal.

The appeal as to DOCX shall be dismissed.

B. Appeal as to All Other Respondents

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. (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 985-986 (*Buller*).) We then determine if those facts are sufficient, as a matter of law, to state a cause of action under any legal theory. (*Aguilera v. Heiman* (2009) 174 Cal.App.4th 590, 595.)

In order to prevail on appeal, an appellant must affirmatively demonstrate error. Specifically, the appellant must show 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 v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 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 (*Debro*).)

In this case, we must also be mindful that the foreclosure proceedings with respect to appellants' property were conducted pursuant to California's nonjudicial foreclosure statutes. (Civ. Code, §§ 2924-2924k.) These statutes provide "a comprehensive scheme designed '(1) to provide the creditor/beneficiary with a quick, inexpensive and efficient remedy against a defaulting debtor/trustor; (2) to protect the debtor/trustor from wrongful

loss of the property; and (3) to ensure that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser.’ [Citation.] As a result, a nonjudicial foreclosure sale is *presumed to have been conducted regularly*, and the burden of proof rests with the party attempting to rebut this presumption. [Citations.]” (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 270 (*Fontenot*), italics added; see *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1258; *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 86, fn. 4 (*Knapp*).) Thus, the burden fell squarely on appellants to plead facts demonstrating the impropriety of the foreclosure proceedings.

Part of this burden is to allege facts showing that the borrowers were prejudiced specifically by the claimed irregularity in the foreclosure proceeding. (E.g., *Knapp, supra*, 123 Cal.App.4th at p. 86 fn. 4.) Thus, even if an assignment of a note and deed of trust to the foreclosing party is alleged to be void, a borrower cannot attack the foreclosure without adequately alleging how that assignment caused the borrower harm. (See *Herrera v. Federal National Mortgage Assn.* (2012) 205 Cal.App.4th 1495, 1507-1508; *Debrunner v. Deutsche Bank National Trust Co.* (2012) 204 Cal.App.4th 433, 443; *Fontenot, supra*, 198 Cal.App.4th at p. 272.) Because an assignment of a note and deed of trust merely substitutes one creditor for another, without changing the borrower’s obligations, the victim of a void assignment is not the borrower, but the assignor who suffers the unauthorized loss of a promissory note. (*Herrera, supra*, 205 Cal.App.4th at p. 1508; *Fontenot, supra*, 198 Cal.App.4th at p. 272.) Accordingly, unless the borrower alleges additional facts – such as the assignor (e.g. AHMSI) would have refrained from foreclosure while the assignee (e.g. Wells Fargo) did not, or the borrower faced liability under the note and deed of trust to the assignor or a third party as well as to the assignee – the borrower has not alleged the requisite prejudice. (See *Herrera, supra*, 205 Cal.App.4th at p. 1508; *Fontenot, supra*, 198 Cal.App.4th at p. 272.) As we shall see *post*, this principle underscores a deficiency in a number of appellants’ attempts to allege a cause of action.

1. *First Cause of Action: Slander of Title*

Slander of title is “a tortious injury to property resulting from unprivileged, false, malicious publication of disparaging statements regarding the title to property owned by plaintiff, to plaintiff’s damage.” (*Southcott v. Pioneer Title Co.* (1962) 203 Cal.App.2d 673, 676; see *Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal.App.4th 1040, 1051.) A disparaging statement is one intended to “cast doubt” on the “existence or extent” of another’s property interest. (*Glass v. Gulf Oil Corp.* (1970) 12 Cal.App.3d 412, 423.) To be actionable, the disparaging statement must be relied upon by a third party and cause the property owner pecuniary loss. (*Appel v. Burman* (1984) 159 Cal.App.3d 1209, 1214.)

Appellants’ amended complaint does not state a claim for slander of title because it does not allege a disparaging statement. Appellants argue that the recordation of the assignment disparaged their title and falsely created a “cloud” on the title, but neither the assignment nor its recordation did any such thing. The encumbrance on their property was created by the original deed of trust; the fact of the *assignment* of the deed of trust – whether or not it was valid – did not create any new encumbrance or diminish appellants’ interest in the property.

Appellants also fail to allege pecuniary loss resulting from the assignment. Acknowledging that pecuniary loss is an essential element of a slander of title claim, appellants suggest in their opening brief that pecuniary loss resulted from the recordation of the assignment, but they do not identify exactly what that loss is, and certainly did not allege any specific facts concerning pecuniary loss in their amended complaint. By virtue of the note and deed of trust appellants signed at the outset, appellants were already required to make certain payments, and the assignment did nothing to change that. Furthermore, the nonjudicial foreclosure was precipitated not by the assignment itself, but by appellants’ failure to make those payments. Nor do appellants allege that the purported assignment to Wells Fargo has subjected them to multiple liability (such as where, for example, the original assignee or other entities claiming under other assignments were also seeking enforcement of the note).

The court did not err in sustaining the demurrers to appellants' purported cause of action for slander of title.

2. *Second Cause of Action: Violation of Statute or Fraud*

Appellants' second cause of action was for tortious violation of Penal Code section 470, subdivisions (b) and (d). Appellants do not contend in this appeal, however, that they have any private cause of action under Penal Code section 470. Instead, they argue that their allegations state a cause of action for fraud. Appellants are incorrect.

In the first place, fraud must be alleged with particularity. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645; *Winn v. McCulloch Corp.* (1976) 60 Cal.App.3d 663, 670; *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1615.) The amended complaint contains no specific allegations of fraud by AHMSI, Wells Fargo, Option One, or Premier Trust, but merely general allegations on information and belief that "defendants" prompted DOCX to forge the assignment and boilerplate allegations that they authorized or ratified DOCX's actions. These allegations are insufficient.

Furthermore, a fraud cause of action requires an allegation of justifiable and reasonable reliance on a misrepresentation, as well as an allegation of resulting damage. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 990.) Appellants' amended complaint alleges neither: it does not assert that the assignment (including its execution, notarization, and recordation) caused appellants to take any action in reasonable reliance upon its representations, or that appellants suffered any loss as a result. Nor does it allege that appellants were harmed as a result of a third party's reliance upon the representations of the assignment, or that the assignment caused appellants any loss or damage that they would not have been obligated to incur if the purported assignment to Wells Fargo had not been made. The trial court sustained the demurrer as to this cause of action on this ground, and even now appellants fail to mount any substantial argument to the contrary.

The court did not err in sustaining the demurrers to the purported cause of action for violation of Penal Code section 470 or fraud.

3. *Third Cause of Action: Notary Fraud*

Appellants purported to allege a claim for notary fraud. But their opening brief does not address the court's ruling on the demurrer as to this cause of action, and they have filed no reply brief. Appellants therefore fail to establish error. (See *Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) 188 Cal.App.4th 401, 427-428.)

4. *Fourth Cause of Action: Cancellation of Instrument*

Appellants requested that the trial court enter an order cancelling the assignment of the deed of trust on the ground that the assignment contains false information and affects their title to the property. Their allegations state no cause of action.

Civil Code section 3412 provides: "A written instrument in respect to which there is reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled." For reasons explained *ante*, however, appellants fail to allege facts to support an inference that the assignment "may cause serious injury to a person against whom it is void or voidable," or that they would constitute such a "person." (Civ. Code, § 3412.) They therefore fail to state a claim under Civil Code section 3412.

Furthermore, to the extent appellants' request for cancellation of the assignment is a request for a particular type of relief rather than a substantive cause of action that may stand on its own, the amended complaint does not state any other cause of action – as discussed *ante* and *post* – that would support such relief.

Without explanation, appellants liken their situation to the one in *Harris v. Northwestern National Ins. Co.* (1992) 6 Cal.App.4th 1061 (*Harris*). At issue in *Harris*, however, was a motion to tax costs, and particularly whether a surety that had insured a negligent notary could be required to pay costs in excess of its bond. (*Id.* at pp. 1063, 1065.) Those issues are not at stake here, and plainly have nothing to do with the cancellation of an instrument. And while it is true that the trial court in *Harris* had found that a property owner (*Harris*) was entitled to quiet title to her property after someone had forged her signature on a grant deed and a notary had negligently notarized the signature,

nothing in the *Harris* opinion's recitation of those facts has anything to do with this case. Here, no one forged appellants' signature, the allegedly forged instrument was an assignment of a deed of trust rather than a grant deed, and there was already an encumbrance against appellants' property based on the unchallenged note and deed of trust.

The court did not err in sustaining the demurrer as to the cause of action for cancellation of the instrument reflecting the assignment.

5. *Fifth Cause of Action: Quiet Title*

The trial court sustained the demurrer to appellants' fifth cause of action to quiet title on the ground that they failed to allege facts indicating that respondents had an interest adverse to appellants' title and failed to allege their ability and willingness to tender the outstanding balance of their debt. Appellants do not address the court's ruling, arguing instead that a trustee's sale based on a statutorily deficient notice of default is invalid. (Citing *Miller v. Cote* (1982) 127 Cal.App.3d 888.) In our view, the better course for an appellant is to address the basis of the trial court's ruling.

The purpose of a quiet title action is to establish one's title against adverse claims to real property. Appellants do not allege any facts demonstrating that respondent Sand Canyon (f/k/a Option One and f/k/a Premier Trust) claims any interest adverse to appellants' title. To the contrary, their amended complaint avers that Option One assigned away the interest it had in the property to others. On this basis, appellants fail to state a quiet title cause of action against Sand Canyon.

Moreover, to state a cause of action to quiet title against any of the respondents, appellants were required to allege facts demonstrating that they are the rightful owners of the property; that is, that they have satisfied their obligations under the deed of trust. (*Lane v. Vitek Real Estate Indus. Group* (E.D. Cal. 2010) 713 F. Supp. 2d 1092, 1103.) Thus, a borrower cannot quiet title to secured property without alleging that he or she paid the debt secured by the property. (E.g., *Miller v. Provost* (1994) 26 Cal.App.4th 1703, 1707 ["a mortgagor of real property cannot, without paying his debt, quiet his title against the mortgagee"]; *Aguilar v. Bocci* (1974) 39 Cal.App.3d 475, 477.) It would be

inequitable to quiet title in a property owner's name without requiring the owner to repay the secured loan that he or she used to purchase the property in the first place. (See *Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 526.)

Appellants do not allege that they paid off the entire amount due under the loan; nor do they allege a tender of that amount. Instead, they allege that they “fully tendered all mortgage payments which were *lawfully due* under the DEED,” and while “WELLS FARGO made demands for payment as against the DEED,” “WELLS FARGO . . . [lacked] any lawful right, title and interest in the DEED.” (Italics added.) In short, appellants allege that they tendered amounts they agreed they owed, but did not and will not tender other amounts they contend are not lawfully owed. This is patently insufficient. A valid tender of performance must be of the full debt, in good faith, unconditional, and with the ability to perform. (Civ. Code, § 1486, 1493, 1494, 1495.) To hold that appellants' allegations were sufficient would essentially vitiate the tender requirement, since it would mean that borrowers would not have to tender the amount due (or allege their willingness and ability to do so) if they simply contended – as they would always do in a complaint – that the amount was not lawfully due.

The court did not err in sustaining the demurrer as to the purported cause of action to quiet title.

6. *Sixth Cause of Action: Declaratory Relief*

Declaratory relief is available where there is an “actual controversy relating to the legal rights and duties of the respective parties.” (Code Civ. Proc., § 1060.) It is not an independent cause of action, but a form of equitable relief. (*Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 82; see also *California Ins. Guarantee Assn. v. Superior Court* (1991) 231 Cal.App.3d 1617, 1623-1624 [declaratory relief statute provides a form of relief to the plaintiff, not a second cause of action for determination of issues that are the subject of another claim].)

Here, the trial court noted that the purported cause of action for declaratory relief was wholly derivative of the other causes of action in the amended complaint, and having concluded that the demurrer should be sustained as to the underlying causes of action, it

sustained the demurrer as to the declaratory relief claim as well. Appellants do not dispute the court's analysis in this appeal, and we agree that appellants' allegations do not support the remedy of declaratory relief. (*Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800.)

The court did not err in sustaining the demurrer as to the purported cause of action for declaratory relief.

7. *Failure to Allege Tender*

We have already noted that appellants' failure to allege that they tendered the amount due under the deed of trust precludes them from alleging a cause of action for quiet title. As respondents point out, moreover, appellants' failure to allege this tender precludes them from mounting any challenge to the foreclosure proceedings under the circumstances alleged in the amended complaint.

As a general rule, a plaintiff may not challenge the propriety of a foreclosure on his or her property without offering to repay what he or she borrowed against the property. (*Karlsen v. American Sav. & Loan Assn.* (1971) 15 Cal.App.3d 112, 117 [judgment on the pleadings properly granted where plaintiff attempted to set aside trustee's sale for lack of adequate notice, because "[a] valid and viable tender of payment of the indebtedness owing is essential to an action to cancel a voidable sale under a deed of trust"] (*Karlsen*); see *United States Cold Storage v. Great Western Sav. & Loan Assn.* (1985) 165 Cal.App.3d 1214, 1222-1223 ["the law is long-established that a *trustor* or his successor must tender the obligation in full as a prerequisite to a challenge of the foreclosure sale"].) This rule originated from the principle that, before asking a court to exercise its equitable powers to stop or set aside foreclosure proceedings, a defaulting borrower must first "do equity" himself. (*FPCI Re-hab 01 v. E&G Investments, Ltd.* (1989) 207 Cal.App.3d 1018, 1021-1022 [tender rule is based on equitable maxim that a court of equity will not order a useless act performed . . . if plaintiffs could not have redeemed the property had the sale procedures been proper, any irregularities in the sale did not result in damages to the plaintiffs].)

This tender rule is strictly enforced. (*Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 439.) Absent an alleged and actual tender, a complaint seeking to set aside foreclosure proceedings fails to state a viable cause of action. (*Karlsen, supra*, 15 Cal.App.3d at p. 117.)

Appellants do not contend that the tender rule does not apply to their causes of action. For reasons stated *ante*, the allegations of the amended complaint do not establish the requisite tender, providing an additional reason that the allegations of the second amended complaint fail to state any cognizable cause of action.

The trial court did not err in sustaining the demurrers of AMHSI/Wells Fargo and Sand Canyon (f/k/a Option One and f/k/a Premier Trust) to the amended complaint in its entirety.

C. Denial of Leave to Amend

The trial court sustained the demurrers without leave to amend. Appellants do not argue in this appeal that the court abused its discretion in this regard. Nor does our examination of the record indicate any such abuse of discretion.

III. DISPOSITION

The appeal as to DOCX LLC is dismissed. The judgment as to all other respondents is affirmed. All respondents shall recover their costs on appeal from appellants.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.