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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

BEHROOZ DANADOOST et al.,

Plaintiffs and Appellants,

v.

BANK OF AMERICA, N.A. et al.,

Defendants and Respondents.

A138271

(Marin County
Super. Ct. No. CIV1203798)

Behrooz and Pari Danadoost challenge an order sustaining a demurrer, without leave to amend, to their complaint to quiet title to their property in Novato against Bank of America, N.A. (Bank of America), the beneficiary under the deed of trust securing their mortgage loan. The Danadoosts claim the deed of trust is invalid because the underlying promissory note was assigned to an investment pool, while the deed of trust was assigned to Bank of America. This premise is meritless, as California law does not require possession of the note as a precondition to a beneficiary or nominee's nonjudicial foreclosure under a deed of trust. Accordingly, we affirm.

BACKGROUND

Because this appeal challenges a trial court order sustaining a demurrer, we draw the relevant facts from the complaint and documents subject to judicial notice. (*Adams v. Paul* (1995) 11 Cal.4th 583, 586; *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1608–1609.)

In August 2004 the Danadoosts bought the Novato property with a \$1,204,125 loan toward the purchase price secured by a deed of trust in favor of the lender,

Countrywide Bank, a Division of Treasury Bank, N.A. (Countrywide). The deed of trust named Mortgage Electronic Registration Systems, Inc. (MERS) as Countrywide's nominee beneficiary under the deed of trust. MERS subsequently assigned its beneficial interest to Bank of America. Bank of America substituted Recontrust Company, N.A. (Recontrust) as successor trustee.¹

By February 2012, the Danadoosts were almost \$250,000 in arrears on the loan. Recontrust recorded a notice of default and, subsequently, a notice of trustee's sale.

The Danadoosts filed an action to quiet title to the property against Countrywide and others. That suit was dismissed without prejudice after the trial court sustained a demurrer with leave to amend. The Danadoosts then filed this action, also to quiet title. Bank of America demurred. It argued the Danadoosts were not entitled to equitable relief because they had not tendered the arrearages owing under their loan. In opposition, the Danadoosts argued Bank of America had no interest in the property because "the 'Security' adheres to and follows the Note if and when assigned, transferred, or sold, which renders the 'Un-Assigned Deed of Trust' at the time of the note assignment/transfer or sale, encumbering nothing. And Plaintiffs maintain, and through discovery plan to prove, that because the respective notes were sold the late-assigned deeds of trust conveyed nothing as the deeds of trust without the note became null and void . . ." The Danadoosts also contended tender was not required because their suit challenged only "the stale and null and void Deed of Trust, which is an incident of the debt but not the debt itself," and they were not attempting to set aside a trustee's sale or challenge an irregularity in the note or sale procedure.

The trial court sustained the demurrer without leave to amend. It explained: "Contrary to plaintiffs' allegations 'that there is no current holder of any valid "DOT" as claimed herein and that no Party herein can establish that they are the valid current holder of any "DOT" whatsoever,' (Complaint, [¶]12) defendant has shown, through recorded

¹We grant Bank of America's request for judicial notice of the deed of trust and other documents that were filed in the trial court proceedings but omitted from the clerk's transcript submitted by the Danadoosts. (Evid. Code, § 452 subd. (d).)

documents, that it holds the deed of trust and the substituted trustee served the required notices. [¶] Plaintiffs’ opposition citing Civil Code §2936 for the proposition that the subject deed of trust was rendered ‘null and void’ when the note was sold without a concurrent assignment of the DOT is unavailing. Civil Code §2936 codifies the long-standing principle that ‘because the lien of the trust deed is merely an incident of the debt, the assignment by endorsement and delivery of the promissory note accomplishes the transfer of the security *without the necessity of a formal assignment of the trust deed itself.*’ [Citations.] Plaintiffs’ misguided arguments do not dissuade the court from its previous conclusion that Plaintiffs’ Complaint is nothing more than a generalized challenge to the securitization process, which is contrary to the weight of authority. (See Complaint, pp. 3:24-4:3.) Defendants do not lose their power of sale pursuant to the deed of trust when the original promissory note is assigned to a trust pool. [Citations.] Plaintiffs fail to allege a substantive right to relief supporting their quiet title claim as against defendant Bank of America.”

This appeal timely followed.

DISCUSSION

I. Standard of Review

We review an order sustaining a demurrer de novo to determine whether the complaint states facts sufficient to constitute a cause of action. (*Bower v. AT&T Mobility, LLC* (2011) 196 Cal.App.4th 1545, 1552; *Stanton Road Associates v. Pacific Employers Ins. Co.* (1995) 36 Cal.App.4th 333, 341 (*Stanton Road*)). We construe the complaint “liberally . . . with a view to substantial justice between the parties” (Code Civ. Proc., § 452) and treat it “ ‘as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.’ [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context.’ ” (*Stanton Road, supra*, 36 Cal.App.4th at p. 340; *Jager v. County of Alameda* (1992) 8 Cal.App.4th 294, 296–297.) When the court sustains a demurrer without leave to amend, “ ‘we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it

can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.’ [Citations.]” (*Stanton Road, supra*, at p. 341.)

II. The Court Properly Sustained the Demurrer

The Danadoosts argue the note and deed of trust are inseparable and cannot be transferred separately from each other. Accordingly, they contend, the assignment of the note without contemporaneous assignment of the deed of trust invalidated the deed of trust, so it secures nothing. But that is not the law.

Addressing essentially the same contention, *Debrunner v. Deutsche Bank National Trust Co.* (2012) 204 Cal.App.4th 433, 440 explains that “many federal courts have rejected this position, applying California law. All have noted that the procedures to be followed in a nonjudicial foreclosure are governed by sections 2924 through 2924k, which do not require that the note be in the possession of the party initiating the foreclosure. [Citations.] We likewise see nothing in the applicable statutes that precludes foreclosure when the foreclosing party does not possess the original promissory note. They set forth ‘a comprehensive framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust. . . .’ [¶] ‘The comprehensive statutory framework established [in sections 2924 to 2924k] to govern nonjudicial foreclosure sales is intended to be exhaustive.’ [Citations.] [‘These provisions cover every aspect of exercise of the power of sale contained in a deed of trust’].) ‘Because of the exhaustive nature of this scheme, California appellate courts have refused to read any additional requirements into the non-judicial foreclosure statute.’ [Citations.] ‘There is no stated requirement in California’s non-judicial foreclosure scheme that requires a beneficial interest in the Note to foreclose. Rather, the statute broadly allows a trustee, mortgagee, beneficiary, or any of their agents to initiate non-judicial foreclosure. Accordingly, the statute does not require a beneficial interest in both the Note and the Deed of Trust to commence a non-judicial foreclosure sale.’ ” (*Id.* at pp. 440–441, italics added; see also *Hafiz v. Greenpoint Mortg. Funding, Inc.* (N.D.Cal 2009) 652 F.Supp.2d 1039, 1043.)

The Danadoosts raised no other cognizable basis for their quiet title claim and suggest none on appeal, so we affirm the order sustaining Bank of America’s demurrer without leave to amend. (See *Stanton Road, supra*, 36 Cal.App.4th at p. 341 [plaintiff bears the burden of showing a reasonable possibility the defect can be cured by amendment].) In light of this resolution, we need not and do not address Bank of America’s argument that the demurrer was also properly sustained because the Danadoosts failed to allege tender of the arrearages due on their loan. (See, e.g., *Booth v. Hoskins* (1888) 75 Cal. 271, 276 [plaintiff could not quiet title without paying debt, even though the defendant’s attempt to foreclose was barred by statute of limitations]; *Miller v. Provost* (1994) 26 Cal.App.4th 1703, 1707 [citing principle that “mortgagor of real property cannot, without paying his debt, quiet his title against the mortgagee”]; *cf. Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1280.)

DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.