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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

LAWRENCE DELLFIED HOLLIDAY,

Plaintiff and Appellant,

v.

DEUTSCHE BANK NATIONAL TRUST
CO. et al.,

Defendants and Respondents.

A142131

(Alameda County
Super. Ct. No. RG13688458)

BACKGROUND

Plaintiff and appellant Lawrence Dellfied Holliday (Holliday) is the grandson of John Allen (Allen), who (along with his wife) was the owner of property at 9920 Heskett Road, Oakland, California (the property). In 2006, Allen took out a \$478,305 loan, secured by a deed of trust on the property. In August 2008, the trustee recorded a notice of default, and later a notice of trustee’s sale, scheduling it for later that month.

Holliday alleges that he did not receive the notices, but he does admit that the notice of trustee’s sale was placed “in the screen door” on the property and that he went to the sale. Holliday also alleges that the sale was fraudulent because “[n]o people appeared at the auctions and there [were] no bids on the property”

The trustee sold the property to the beneficiary under Allen’s deed of trust. Later, in 2010, the beneficiary sold the property to Robert Dea and Delores Li.

On July 22, 2013, representing himself, Holliday filed a lawsuit in Alameda County, styled as follows: “COMPLAINT TO QUIET TITLE [¶] (Fraud, Negligence, Wrongful Foreclosure, Illegal Title and Recovery of Property) [¶] Code of Civil Proc. 760.010(a), (b). The complaint named nine defendants: “Deutsche Bank National Trust Co.; Financial Asset Securities Corp., Soundview Home Loan Trust 2007-WMCI; Countrywide Home Loans Inc.; Bank of America, Foreclosure Department; Asset-Backed Certificates, Series 2007-WMCI; Recontrust Company; MidCentury Insurance; Robert Dea and Delores Li.” According to Holliday, the named defendants allegedly played various roles *vis-a-vis* the loan, the foreclosure, and the sale of the property, and thus were sued in the four causes of action described by Holliday as follows:

“Plaintiff’s First Cause of Action against Reconstruct Co., [Deutsche] National Foundation [Trust], Bank of America, Countrywide Loan Inc. for fraud, Negligence, forgery, and Conspiracy to foreclose on property”; “Plaintiff’s Second Cause of Action Against Countrwide Loan Inc. for forgery, fraud, and Elderly Abuse to obtain Title for [Deutsche]”; “Third Cause of Action against New Owner Robert Dea & Delores Li, Recontrust Company, Deutsche Bank National Trust Co et al, for Fraud and Forgery Grant Deed”; and “Plaintiff’s Fourth Cause of Action against All Defendants for fraud, negligence, forgery, elderly abuse, wrongful foreclosure, illegal title, and violation of Code of Civil Proc. 760.010(a), (b).”

On October 15, 2013, the first of three demurrers was filed, this on behalf of Robert Dea and Delores Li, who had purchased the property in 2010. (Dea demurrer) The Dea demurrer was accompanied by a request for judicial notice, and was set for hearing on December 11, 2013, before Judge Kimberly Cowell, to whom the case had been assigned for all purposes.

On November 15, 2013, a second demurrer was filed, set for hearing on January 3. This demurrer was on behalf of Deutsche Bank National Trust Company and Countrywide Home Loans, Inc., Bank of America, N.A., and Recontrust Company (Bank demurrer), represented by a law firm different from that representing Dea and Li. This demurrer was also accompanied by a request for judicial notice.

Both the Dea demurrer and the Bank demurrer made lengthy and elaborate arguments why Holliday's complaint had no merit, based on documents in the public record. The demurrers both included several separate, and independent, arguments, one of which was that Holliday had no standing to bring the action. The Bank's demurrer also asserted that all of the causes of action were time barred.

On November 26, 2013, Holliday filed opposition to the Dea demurrer, which opposition did not address the standing issue.

On December 11, 2013, Judge Colwell signed an order sustaining the Dea demurrer with leave to amend, which order provided in pertinent part as follows:

"The Demurrer to Complaint was set for hearing on 12/11/2013 at 09:00 AM in Department 18 before the Honorable Kimberley E. Colwell. The Tentative Ruling was published and has not been contested.

"IT IS HEREBY ORDERED THAT:

"The tentative ruling is affirmed as follows: The demurrer of Defendants Robert Dea and Delores Li ('Defendants') to the Complaint is **SUSTAINED WITH LEAVE TO AMEND**.

"Plaintiff is given leave to state facts sufficient to constitute a cognizable cause or causes of action against Defendants. In amending, Plaintiff shall take note of the arguments asserted by Defendants in their demurrer as to the purported substantive flaws in the causes of action attacked, and Plaintiff shall have a good faith basis in fact and law for asserting timely causes of action against Defendants in an amended complaint. (See C.C.P. § 128.7(b).) Plaintiff has leave to allege facts, if possible, showing that they [*sic*] have standing to bring this action.

"Plaintiff shall not allege causes of action not alleged in the original complaint.

"To the extent that Plaintiff is attempting to allege fraud/bad-faith, Plaintiff is to note that 'every element of the cause of action for fraud must be alleged in the proper manner and the facts constituting the fraud must be alleged with sufficient specificity. . . .

“Plaintiff shall have 10 days to amend (plus 5 extra days for service by mail under C.C.P. § 1013), which time shall run from the date on the Clerk’s certificate of mailing of this Order. Defendants shall have 10 days thereafter to respond.”

Holliday did not file any opposition to the Bank demurrer. On January 3, 2014, Judge Colwell entered her order noting that fact, and then went on to sustain the Bank’s demurrer with leave to amend, in language virtually identical to that in the order on the Dea demurrer.

Holliday obtained an extension of time to file his amended complaint, to February 18, 2014.

Meanwhile, on January 23, 2014, a third demurrer was filed, this on behalf of Mid-Century Insurance Company, represented by yet a third law firm (Mid-Century demurrer). The Mid-Century demurrer began with this preliminary statement: “Plaintiff, who did not have title to the property, lacks standing to bring this action. Further, the statute of limitations has run on all of his supposed claims. In any case, the Complaint does not state a claim against Mid-Century because it is impossible to tell from the complaint: (1) what Mid-Century did wrong; and (2) what relationship Mid-Century had to the alleged wrongful foreclosure.”

The Mid-Century demurrer was set for hearing on February 26, 2014.

On February 18, 2014, Holliday filed his first amended complaint, which generated a second round of demurrers, as follows: a second Dea demurrer, on March 11; a second Bank demurrer, also on March 11; and a second demurrer by Mid-Century (its first demurrer having been dropped as moot). The demurrers were set for hearing on May 21, 2014.

On April 8, 2014, Holliday filed opposition. The demurring parties filed replies.

On May 21, 2014, Judge Colwell entered three separate orders, all of which sustained the demurrers without leave to amend, also saying this: “The companion motion to strike is GRANTED. [¶] After an opportunity to amend, Plaintiff has failed to state facts sufficient to constitute a cognizable cause or causes of action against

Defendants. Most importantly, Plaintiff has failed to allege facts showing that he has standing to bring this action. [¶] The action is hereby DISMISSED.”

Judgments were thereafter entered from which Holliday appealed.

DISCUSSION

Still representing himself, Holliday has appealed from the judgments following the sustaining of the three demurrers without leave to amend, triggering, of course, the well-settled standard of review in this Court. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Noting that rule only in passing, Holliday has filed a seven-page brief that contains four arguments, the first of which is that the “trial court abuse [*sic*] its discretion for granting demurrer.” As is apparent, that argument cannot prevail, as the standard is not abuse of discretion. Nor can Holliday’s other arguments, for the very fundamental reason relied on by Judge Colwell.

Before setting forth why, we briefly set forth some general principles, beginning with that pertaining to Holliday’s decision to represent himself. He, of course, can make that choice, but he is still held to the same standard as an attorney. (See *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985; *Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638–639; *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1009.) Self-representation is not a ground for lenient treatment, and “[a]s is the case with attorneys, pro. per. litigants must follow correct rules of procedure.” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.) In sum, Holliday “is entitled . . . to no greater consideration than other litigants and attorneys [citations],” but “is held to the same restrictive rules of procedure as an attorney [citation].” (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.)

The second principle is that as an appellant it is Holliday’s “responsibility to affirmatively demonstrate error,” and he must show such error “by citation to the record and any supporting authority. In other words, review is limited to issues which have been adequately raised and briefed.” (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116; accord *Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 126.) Specifically, “Each brief must: [¶] . . . Support any reference to a matter in the

record by a citation to the volume and page number of the record where the matter appears.” (Cal Rules of Court, rule 8.204(a)(1)(C).)

Holliday’s brief does not measure up. In any event, his appeal cannot prevail.

As noted, the demurrers all argued that Holliday had no standing. As also noted, Judge Colwell’s first orders sustaining the demurrers with leave to amend in particular noted that Holliday had to address the standing issue. His amended complaint did not, the second round of demurrers called him on it, and Judge Colwell sustained the demurrers without leave to amend, expressly pointing to Holliday’s failure regarding standing.

Despite that, Holliday’s opening brief on appeal does not address the standing issue, not even mentioning it. The three respondent’s briefs all argue that Holliday has no standing. And Holliday has not even filed an appellant’s reply brief. Were all that not enough, the record demonstrates that Holliday does not have standing.

Code of Civil Procedure section 367 provides that, except as otherwise provided by statute, “every action must be prosecuted by the real party in interest.” (See *Dino v. Pelayo* (2006) 145 Cal.App.4th 347, 353.) Generally, the real party in interest is the person who has the right to sue under the substantive law. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 2:2, p. 2-2.)

As noted, this action involves an alleged unlawful foreclosure on the property that was owned by appellant’s grandparents, the Allens. In paragraphs one to 14 of his amended complaint, Holliday sets forth the claimed ownership history of the property, with allegations relating to a reverse mortgage that was issued, and a subsequent default, foreclosure, and resale of the property. In short, the harm alleged in the amended complaint relates to the foreclosure and resale of the property.

So, the substantive law is the law of foreclosure, which is this: “As a general rule ‘only parties with an interest in the secured loan or in the real property security itself have standing to challenge or attempt to set aside a nonjudicial foreclosure sale’ ” (*Banc of America Leasing & Capital, LLC v. 3 Arch Trustee Services, Inc.* (2009) 180 Cal.App.4th 1090, 1103, quoting Greenwald & Asimow, Cal. Practice Guide: Real

Property Transactions (The Rutter Group 2009) [¶] 6:535.14 & 15a, pp. 6-105 to 6-106; accord *Royal Thrift & Loan Co. v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 33 [same].)

Here, Holliday alleged that on October 6, 1986, his grandfather (and his wife) deeded the property to themselves and Holliday as joint tenants. However, as submitted to Judge Colwell pursuant to requests for judicial notice, a quitclaim deed dated September 4, 1987, signed by Holliday and both his grandparents, was recorded, which removed Holliday's interest in the property and returned full ownership to the Allens. Thus, Holliday has no standing.

Holliday's first amended complaint contains the conclusory allegation that Holliday "has a valid interest as heir of this property to grandfather's house" —an allegation he does not even mention in his brief. To sue as Allen's heir or successor in interest, Holliday had to, but did not, comply with Code of Civil Procedure section 377.32, which among other things requires that Holliday file an affidavit under oath stating whether his grandfather's estate has been administered and, if so, attach a copy of the order showing the legal claims were distributed to Holliday or that Holliday is authorized to act as his grandfather's successor in interest.

In sum, Judge Colwell's order instructed Holliday to "allege facts, if possible, showing that [he has] standing to bring this action." He did not—not below, not here.

The judgments are affirmed.

Richman, J.

We concur:

Kline, P.J.

Stewart, J.