

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SAMUEL ST. JAMES,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK, N.A. et al.,

Defendants and Respondents.

D059674

(Super. Ct. No.  
37-2010-00106961-CU-OR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald S. Prager, Judge. Affirmed.

I.

INTRODUCTION

Samuel St. James brought this action against defendants JPMorgan Chase Bank, N.A., California Reconveyance Company, and Chase Home Finance, LLC. (collectively respondents), contending that respondents wrongfully instituted nonjudicial foreclosure proceedings on certain real property that St. James owned. St. James brought a cause of action against respondents entitled "Lack of Standing to Foreclose," together with several

related claims. The gist of St. James's claims was that respondents had failed to prove that they were a proper party to institute foreclosure proceedings on the property. More specifically, St. James contended that respondents were not entitled to foreclose on the property because they held only a deed of trust on the property, and had not demonstrated that they possessed the original promissory note secured by that deed of trust. The trial court sustained respondents' demurrer without leave to amend and entered judgment in their favor. On appeal, St. James contends that the trial court erred in sustaining respondents' demurrer because respondents "have not proved . . . they have [St. James's] debt, as substantiated by the wet inked promissory note, because that wet inked promissory note was passed on as a securitized mortgage loan to investors so [r]espondents cannot have it."

California law does not require that a party instituting nonjudicial foreclosure proceedings on real property possess the original promissory note on which the foreclosure is based. (*Debrunner v. Deutsche Bank National Trust Co.* (2012) 204 Cal.App.4th 433, 439 (*Debrunner*)). In addition, a plaintiff does not properly allege a cause of action for lack of standing to foreclose by merely alleging that his original promissory note has been sold in the secondary market. (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1152, 1155 (*Gomes*); *Robinson v. Countrywide Home Loans, Inc.* (2011) 199 Cal.App.4th 42, 45 (*Robinson*)) [affirming order sustaining demurrer without leave to amend for wrongful initiation of foreclosure based on allegation that "promissory note was 'sold and resold' on the secondary mortgage market,

and that as a result, it had become difficult or impossible to ascertain the actual owner of the beneficial interest in the note"].) Accordingly, we affirm the judgment.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *St. James's complaint*

In December 2010, St. James filed a complaint against respondents in which he alleged that in April 2005, he executed a promissory note (promissory note) with Washington Mutual Bank as lender in connection with the refinancing of certain real property that he owned in San Diego (the property). St. James alleged that JPMorgan Chase Bank later acquired a "large portion of Washington Mutual Bank's assets," but that the promissory note on the property was not among the transferred assets. St. James alleged that JPMorgan Chase Bank was thus a mere "servicing agent" of the loan and not the "owner" of the promissory note.<sup>1</sup>

In a cause of action entitled "Lack of Standing to Foreclose," St. James alleged "that [JPMorgan Chase Bank], and its subsidiary [California Reconveyance Company] lack standing to pursue a nonjudicial, or judicial foreclosure" of the property. The complaint acknowledges that "[California Reconveyance Company] [holds] . . . [a] [d]eed of [t]rust" and that "[JPMorgan Chase Bank], has . . . the [d]eed of [t]rust" on the property. However, St. James alleged that Washington Mutual Bank had transferred the

---

<sup>1</sup> In his complaint, St. James alleged that California Reconveyance Company is the "agent of foreclosure for" JPMorgan Chase Bank. The complaint does not make any specific allegations against Chase Home Finance, LLC.

promissory note to a "third party" prior to JPMorgan Chase Bank's acquisition of the assets of Washington Mutual Bank, and that neither California Reconveyance Company nor JPMorgan Chase Bank held the promissory note on the property. St. James contended, "Without the original [promissory note] [respondents are] barred from enforcement regarding foreclosure [*sic*], even if they have a Xerox copy of said [promissory note]." St. James further asserted that "[e]nforcement of a note always requires that the person seeking to foreclosure show it is the holder," and that because JPMorgan Chase Bank did not have the original promissory note, "neither [JPMorgan Chase Bank], nor its agent, California Reconveyance Company has a legal right to foreclose . . . ."

In a cause of action for quiet title, St. James alleged that none of the respondents was a "true holder of the [promissory note]," none of respondents could "prove any interest in the [promissory note] other than being a servicer," and none of the respondents could prove "that the original [promissory note] is secured by the [d]eed of [t]rust." St. James further claimed that, "JPMorgan Chase Bank must produce the original [promissory note] and show that JPMorgan Chase Bank is the owner and holder of the [promissory note], if they cannot—then they are impostor's [*sic*] trying to pull the wool over this Court's eyes." St. James alleged that he is entitled to a judicial declaration that title to the property is vested solely in his name because respondents lack any "right, title, estate, lien, or interest in [Plaintiff's] home."

In a cause of action for declaratory relief, St. James requested that the court determine whether JPMorgan Chase Bank is the owner of the promissory note. St. James

also requested that the court issue an injunction prohibiting respondents from wrongfully proceeding with a nonjudicial foreclosure on the property.

B. *Respondents' demurrer*

In February 2011, respondents filed a demurrer in which they contended that none of St. James's claims stated facts sufficient to constitute a cause of action. In a supporting brief, respondents maintained St. James's cause of action for lack of standing to foreclose failed because a party may initiate foreclosure proceedings on a deed of trust without being in physical possession of an original promissory note that the deed of trust secures. With respect to St. James's quiet title cause of action, respondents argued that St. James had failed to adequately allege all of the adverse claims of title to the property. In addition, respondents argued that St. James's quiet title cause of action failed because St. James had not offered to tender an amount sufficient to cure the underlying default, as is required in order to state a claim for quiet title based on wrongful foreclosure. Respondents contended that the court should deny St. James's request for declaratory relief as duplicative of his other causes of action, and that St. James was not entitled to injunctive relief because he had failed to allege any viable causes of action. Finally, respondents contended that St. James's costs and damages cause of action is not a cognizable claim under California law.

In his opposition, St. James contended that he had properly stated a claim for lack of standing to foreclose based on his allegation that JPMorgan Chase Bank possessed only a deed of trust, and did not possess the promissory note that the deed of trust secured. St. James argued "whoever has the promissory note is the only entity that can

enforce the mortgage [i.e. deed of trust]." With respect to his quiet title cause of action, St. James contended that he was not required to offer to tender a sum to cure the underlying default on his loan because JPMorgan Chase Bank was not entitled to initiate foreclosure proceedings. St. James further contended that he had adequately stated claims for declaratory and injunctive relief. With respect to his costs and damages cause of action, St. James stated that he was "asking specifically for his hourly rate for his labor upon proof to the court" in lieu of attorney fees.

C. *The trial court's ruling*

In April 2011, the trial court entered an order sustaining respondents' demurrer without leave to amend. The trial court ruled that St. James had failed to state a claim for lack of standing to foreclose because "one need not be the 'holder of the note' in order to initiate foreclosure proceedings when the borrower defaults on the loan." The trial court ruled that St. James's quiet title cause of action failed because St James "failed to allege facts to show that he tendered or offered to tend a sum to cure the default," as is required. The trial court denied St. James's request for declaratory relief on the ground that this claim was duplicative of his other causes of action, and denied his request for injunctive relief on the ground that St. James had failed to allege any viable claims. Finally, the court ruled that St. James's claim for costs and damages was not a cognizable claim.

In June 2011, the trial court entered judgment in favor of respondents.

### III.

#### DISCUSSION

*The trial court properly sustained respondents' demurrer without leave to amend*

St. James contends that his complaint properly stated causes of action for lack of standing to foreclose and quiet title, and properly included a request for declaratory and injunctive relief.<sup>2</sup>

#### A. *Standards of review*

We review de novo an order sustaining a demurrer to determine whether the complaint alleges facts sufficient to state a cause of action. (*CPF Agency Corp. v. Sevel's 24 Hour Towing Service* (2005) 132 Cal.App.4th 1034, 1042.) We exercise our independent judgment as to whether the complaint states a cause of action. (*Palestini v. General Dynamics Corp.* (2002) 99 Cal.App.4th 80, 86.) " 'A judgment of dismissal after a demurrer has been sustained without leave to amend will be affirmed if proper on any grounds stated in the demurrer, whether or not the court acted on that ground.' " (*Gomes, supra*, 192 Cal.App.4th at p. 1153, citation omitted.)

When a demurrer is sustained 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

---

<sup>2</sup> St. James does not address the cause of action in his complaint labeled "Plaintiff's Hourly Wage Fee and Cost" in his briefing on appeal. Thus, we conclude St. James has abandoned this claim. (See, e.g., *Hood v. Compton Community College Dist.* (2005) 127 Cal.App.4th 954, 958, fn. 2 ["We assume from plaintiffs' failure to discuss the due process violation claim in their opening brief that the cause of action has been abandoned".])

discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

B. *Governing law*

In *Debrunner, supra*, 204 Cal.App.4th 433, the plaintiff alleged in his complaint that a bank, and certain related entities (bank defendants), could not foreclose on a deed of trust securing a promissory note because the bank defendants were required to have "physical possession of the original note in order to initiate nonjudicial foreclosure proceedings." (*Id.* at p. 439.) The trial court sustained the bank defendants' demurrer to the plaintiff's complaint. (*Id.* at p. 438.) On appeal, plaintiff reiterated his claim that "no foreclosure of a deed of trust is valid unless the beneficiary is in possession of the underlying promissory note." (*Id.* at p. 440.) The *Debrunner* court rejected this argument, reasoning:

"As the parties recognize, 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 [Civil Code] 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 purposes of this comprehensive scheme are threefold: (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.] Notably, [Civil Code] section 2924, subdivision (a)(1), permits a notice of default to be filed by the 'trustee, mortgagee, or beneficiary, or any of their authorized agents.' The provision does not mandate physical

possession of the underlying promissory note in order for this initiation of foreclosure to be valid." (*Debrunner, supra*, at p. 441.)

In *Gomes, supra*, 192 Cal.App.4th 1149, the plaintiff, Gomes, executed a promissory note in favor of KB Home Mortgage Company, secured by a deed of trust on his property. (*Id.* at p. 1151.) The deed of trust identified Mortgage Electronic Registration System (MERS) as both the beneficiary and the "nominee<sup>[3]</sup> for [KB Home Mortgage Company] and [its] successors and assigns." (*Ibid.*) After Gomes defaulted on the note, MERS's agent, ReconTrust, instituted foreclosure proceedings on his property. (*Id.* at p. 1152.)

Gomes filed a lawsuit against KB Home Mortgage Company, MERS, ReconTrust, and a loan servicer, in which he alleged a cause of action for "Wrongful Initiation of Foreclosure." (*Gomes, supra*, 192 Cal.App.4th at p. 1152.) In this claim, Gomes contended that KB Home Mortgage Company had sold his promissory note on the secondary mortgage market, and that the " 'person or entity who directed the initiation of the foreclosure process, whether through an agent of MERS or otherwise, was neither the Note's rightful owner nor acting with the rightful owner's authority.' " (*Ibid.*) The trial court sustained defendants' demurrer without leave to amend. (*Id.* at p. 1153.)

In concluding that Gomes's allegations failed to state a claim, this court stated, "The recognition of the right to bring a lawsuit to determine a nominee's authorization to proceed with foreclosure on behalf of the noteholder would fundamentally undermine the

---

<sup>3</sup> "A 'nominee' is a person or entity designated to act for another in a limited role—in effect, an agent." (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 270 (*Fontenot*).)

nonjudicial nature of the process and introduce the possibility of lawsuits filed solely for the purpose of delaying valid foreclosures." (*Gomes, supra*, 192 Cal.App.4th at p. 1155.)

The *Gomes* court noted that there was no authority that recognized a cause of action requiring an entity "to prove its authority to initiate a foreclosure proceeding." (*Ibid.*)

The *Gomes* court distinguished several federal cases in which a plaintiff was held to have adequately alleged that the "wrong party had initiated the foreclosure process," stating:

"[I]n each of these cases, the plaintiff's complaint identified a *specific factual basis* for alleging that the foreclosure was not initiated by the correct party. *Gomes* has not asserted *any* factual basis to suspect that MERS lacks authority to proceed with the foreclosure. He simply seeks the right to bring a lawsuit to find out *whether* MERS has such authority. No case law or statute authorizes such a speculative suit." (*Id.* at p. 1156.)

C. *The complaint fails to allege facts sufficient to constitute any cause of action*

St. James's complaint is far from a model of clarity. However, the gist of the claims, and in particular, the cause of action for "lack of standing to foreclose," appears to be that California Reconveyance Company is not entitled to initiate foreclosure proceedings on behalf of JPMorgan Chase Bank because neither entity has demonstrated that JPMorgan Chase Bank holds the original promissory note secured by a deed of trust on the property.<sup>4</sup> St. James appears to contend that JPMorgan Chase Bank will be unable

---

<sup>4</sup> The complaint states, "Enforcement of a note always requires that the person seeking to foreclose show that it is the holder." The complaint also states, "[California Reconveyance Company] is holding just the Deed of Trust," and "an unknown investor is holding the original [promissory note]."

to make such a showing because the original promissory note was sold on the secondary market, and that the deed of trust that secures such a note is therefore unenforceable.<sup>5</sup>

California courts have held that such allegations fail to state a claim. First, with respect to St. James's contention that the complaint properly states a claim for lack of standing to foreclose because respondents have not, as St. James argues on appeal, "proved . . . they have [the] . . . wet inked promissory note," the *Debrunner* court squarely rejected an identical argument. (*Debrunner, supra*, 204 Cal.App.4th at p. 440 [rejecting plaintiff's argument that "no foreclosure of a deed of trust is valid unless the beneficiary is in possession of the underlying promissory note"].) California courts have also held that a claim for wrongful initiation of foreclosure is not properly stated when based merely on the allegation that securitization of an underlying promissory note has made it impossible for the plaintiff to determine whether the proper party has instituted foreclosure proceedings. (*Gomes, supra*, 192 Cal.App.4th at p. 1152 [concluding that plaintiff who had alleged that he did " 'not know the identity of [a promissory note's] beneficial owner' " because he believed the note had been sold on "the secondary mortgage market," had not adequately stated a claim for wrongful initiation of

---

<sup>5</sup> The complaint states "[St. James] also alleges that . . . JPMorgan Chase Bank lack[s] standing because the [promissory note] was sold from one bank to the other and then through trust entities became [residential mortgage backed securities]," and that this occurred "well before JPMorgan Chase Bank bought the assets of Washington Mutual Bank . . . in September 2008." The complaint also alleges that as a result of this securitization of the promissory note, "[St. James's] Deed of Trust and Mortgage Note Instrument have been split apart," and JPMorgan Chase Bank may not institute foreclosure proceedings on the deed of trust because it does not possess the promissory note.

foreclosure]; *Robinson, supra*, 199 Cal.App.4th at p. 45 [affirming order sustaining demurrer without leave to amend where plaintiff claimed wrong party had initiated foreclosure based on allegation that securitization of promissory note had made it impossible to determine the note's owner and stating "[t]he issues plaintiffs raise concerning the securitized mortgage market were recently discussed in *Gomes*"; accord *Herrera v. Federal Nat. Mortg. Assn.* (2012) 205 Cal.App.4th 1495, 1506 ["since the assignment of the debt (the promissory note), as opposed to the security (the [deed of trust]), commonly is not recorded, the lender could have assigned the note to the beneficiary in an unrecorded document not disclosed to plaintiffs"].)

In addition, like the complaint in *Gomes*, St. James's complaint fails to state a claim for lack of standing to foreclose because he has not "identified a *specific factual basis* for alleging that the foreclosure was not initiated by the correct party." (*Gomes, supra*, 192 Cal.App.4th at p. 1156; accord *Fontenot, supra*, 198 Cal.App.4th at p. 270 ["if plaintiff contended the sale was invalid because [bank] had no authority to conduct the sale, the burden rested with plaintiff affirmatively to plead facts demonstrating the impropriety"].) Finally, the trial court did not abuse its discretion in sustaining the demurrer without leave to amend, since St. James has not identified any additional facts that he could allege that would properly state a cause of action for lack of standing to foreclose. (See *Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.)<sup>6</sup>

---

<sup>6</sup> The trial court also properly sustained respondents' demurrer without leave to amend as to St. James's claim for quiet title and his request for declaratory and injunctive relief. St. James's request to quiet title was premised on the same factually insufficient

IV.

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McDONALD, J.

---

allegations that form the basis of his claim of lack of standing to foreclose, discussed in the text. St. James's request that the trial court determine whether JPMorgan Chase Bank is the proper entity to foreclose on the property is duplicative of his cause of action for lack of standing to foreclose. Finally, the trial court properly sustained the respondents' demurrer to St. James's request to enjoin respondents from foreclosing on the property because St. James did not sufficiently allege any legally viable basis for issuing such an injunction.