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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JEREMY COATS,

Plaintiff and Appellant,

v.

JP MORGAN CHASE BANK, N.A., et al.,

Defendants and Respondents.

G045921

(Super. Ct. No. 30-2010-00428773)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Linda S. Marks, Judge. Affirmed.

Jeremy Coats, in pro. per., for Plaintiff and Appellant.

AlvaradoSmith, Theodore E. Bacon and Michael B. Tannatt for Defendants and Respondents.

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This is an appeal from an order sustaining a demurrer by JP Morgan Chase Bank, N.A. (Chase) and California Reconveyance Company (collectively defendants) to a second amended complaint (the complaint) filed by Jeremy Coats (plaintiff) and Michael R. Coats.¹ The complaint alleged claims against defendants for quiet title and other causes of action related to foreclosure proceedings. Defendants demurred, arguing, among other things, that because neither plaintiff was listed on the title of the subject property or were borrowers on the pertinent loan, they did not have standing to bring suit. The demurrer, to which no opposition was filed, was sustained on those grounds without further leave to amend. We agree with defendants that the court did not err in sustaining the demurrer, and therefore affirm.

I FACTS

We draw the facts primarily from the complaint. In 1998, Lillian Fossa created the LEC Trust (the trust) and was its manager. Jeremy and Michael Coats, her children, were both beneficiaries of the trust. Ronald Nelson was a “former Trustee” and Vicky Nelson was a “former Agent” of the trust.

Fossa had owned a home in Buena Park (the property) since 1976. In 1998, she transferred the property into the trust. According to the complaint, in 2004, “for the sole purpose of refinancing” the property, a trustee, Nancy Wright, transferred the property to Ronald and Vicky Nelson (the Nelsons). That transaction was completed, and they reconveyed a grant deed back to the trust.

In 2007, Fossa allegedly asked Ronald Nelson if the Nelsons would once again refinance the property. After some discussion, they agreed to do so. As compensation, Ronald Nelson wanted “Trust documents” created for the Nelsons.

¹ Although both Jeremy and Michael Coats filed the complaint in the trial court, only Jeremy Coats, representing himself, is before the court in this appeal.

Wright again transferred the property to the Nelsons. In May 2007, a new loan in the amount of \$260,000 from GreenPoint Mortgage was initiated.

A dispute then arose between Fossa and the Nelsons over a \$6000 loan the Nelsons had made to the trust in 2006. A number of attempts to resolve the matter followed, but according to the complaint, the Nelsons refused to reconvey the property to the trust. Issues with payments on the new loan began to arise immediately. In July, Ronald Nelson resigned as trustee. The complaint alleged he threatened to sell the house “if his demands were not met.” Timely payments were purportedly made in August and September.

At some point in the fall of 2007, Fossa learned that servicing of the loan was transferred from GreenPoint Mortgage to Washington Mutual. Ronald Nelson allegedly failed to communicate the change in lenders to Fossa or anyone connected with the trust. Litigation between the Nelsons and Fossa, on behalf of the trust, followed, which resulted in a dismissal of both complaint and cross-complaint.

As a result of the litigation, the complaint alleged, Fossa became aware of the change in loan servicers and sought information from Washington Mutual regarding the delinquency. The trust was provided with a total delinquency amount, without a breakdown. She was told the Nelsons’ authorization was required before the bank could send duplicate statements.

In September 2008, Chase acquired the subject loan from the FDIC after Washington Mutual’s failure. In 2009, California Reconveyance Company recorded a notice of default on the loan. According to the complaint, defects in the chain of title exist between GreenPoint and Chase.

In November 2010, Michael and Jeremy Coats filed their initial pleading in the instant case. The instant complaint, filed in April 2011, alleged causes of action for quiet title, fraud, fraud and negligent misrepresentation, civil conspiracy, accounting and

declaratory relief. Although the Nelsons were named as defendants, they are not parties to this appeal. Defendants are named in all causes of action except for quiet title.

In May 2011, defendants filed a demurrer, arguing both that defendants lacked standing to sue, and their causes of action failed to allege facts sufficient to state a cause of action. No opposition was filed, and the court sustained the demurrer. Judgment was subsequently entered for defendants.

II

DISCUSSION

Standard of Review

“In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. ‘We treat the demurrer 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. [Citation.]” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

We give no effect, however, to contentions, deductions, or conclusions of either fact or law.

(*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.)

“When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it 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 discretion and we affirm. [Citations.]

The burden of proving such reasonable possibility is squarely on the plaintiff.

[Citation.]” (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.)

Standing to Sue

Code of Civil Procedure section 367 states, “Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.” If someone other than the real party in interest files a lawsuit, the complaint is subject to a general demurrer. (Code Civ. Proc., § 430.10; *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796.)

Generally, the trustee is the real party in interest with standing to sue and defend on the trust’s behalf. (*Wolf v. Mitchell, Silberberg & Knupp* (1999) 76 Cal.App.4th 1030, 1035-1036.) The only exception relevant here is that a trust’s beneficiaries can bring an action against a trustee for breach of trust. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 463.) Additionally, and this is the point on which plaintiff relies, “a trust beneficiary can pursue a cause of action against a third party who actively participates in or knowingly benefits from a trustee’s breach of trust.” (*Estate of Bowles* (2008) 169 Cal.App.4th 684, 692.)

Plaintiff points to this language: “[W]hen the claim being asserted rests in whole or in part on alleged breaches of trust by the trustee, a beneficiary has standing to pursue such a claim against either (1) the trustee directly, (2) the trustee *and* third parties participating in or benefiting from his, her, or its breach of trust, or (3) such third parties alone.” (*Harnedy v. Whitty* (2003) 110 Cal.App.4th 1333, 1341-1342.) Thus, plaintiff argues, because their claim rests on alleged breaches of trust by Ronald Nelson, they have standing to sue defendants, who are third parties. What plaintiff misses, however, is the requirement that his claims against defendants must have some connection to the alleged breach of trust by the trustee. Here, Ronald Nelson’s acts were not alleged to be connected in any way to the foreclosure proceedings, which are the only acts defendants are alleged to have committed. Even if defendants’ actions were in error or wrongful, they were not alleged to have been directed by Ronald Nelson or to have benefitted him in any manner. Plaintiff’s claim does not qualify for this limited exception regarding

breaches of duty by a trustee, and therefore, he lacks standing to bring this action. The demurrer was properly sustained on this ground.

Failure to State a Cause of Action

As a separate ground for sustaining the demurrer, defendants argue that plaintiff failed to allege a valid cause of action. With respect to their second and third causes of action, both of which are based on fraud, plaintiff alleged defendants committed fraud by alleging they had standing to foreclose, failing to properly record and transfer legal documents, and other deficiencies in the foreclosure process. While plaintiff conclusorily alleges “defendants . . . made intentional and negligent representations of material facts, in their processing of the NOTICE OF DEFAULT and these representations were in fact false” he fails to specify what those statements were or that he relied on them in any fashion.

The elements of a cause of action for fraud are: (1) a misrepresentation; (2) knowledge of falsity; (3) intent to defraud or induce reliance; and (4) actual reliance by the plaintiff. (Civ. Code, § 1709; *Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255; *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173.) The plaintiff must allege that he actually relied upon the misrepresentations, and that in the absence of fraud, he would not have entered into the contract or other transaction. (*The MEGA Life & Health Ins. Co. v. Superior Court* (2009) 172 Cal.App.4th 1522, 1530; *Schauer v. Mandarin Gems of Cal., Inc.* (2005) 125 Cal.App.4th 949, 960.) Plaintiff has failed to allege fraud or negligent misrepresentation.

With respect to the next cause of action, conspiracy, the pleading is similarly deficient. Conspiracy is not a separate tort, but a form of vicarious liability by which one defendant can be held liable for the acts of another. (*De Vries v. Brumback* (1960) 53 Cal.2d. 643, 650; *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1581.) Thus, conspiracy provides a remedial measure for affixing liability to all

who have “agreed to a common design to commit a wrong” when damage to the plaintiff results. (*Agnew v. Parks* (1959) 172 Cal.App.2d 756, 762.)

Naming both the instant defendants and the Nelsons in this cause of action, plaintiff alleges “that defendants agreed to act in consort to deprive the beneficiaries of the ‘subject property’ and equity in said ‘subject property’ of which the Trust and the Plaintiffs have a legal right to. Further, all named defendants undertook and agreed to a series of acts to further their agreement to deprive the beneficiaries of their legal right to possession of the aforementioned real property and equity in said real property.”

The alleged facts do not support this allegation. The only actions alleged by Chase and California Reconveyance Company are that they moved to foreclose on a loan on which no payments had been made for some time. This neither proves nor even suggests wrongful conduct, much less a conspiracy between any employee or agent of the two companies. Further, no specific overt act is alleged. The demurrer to this cause of action was properly sustained.

With respect to plaintiff’s cause of action for an accounting, plaintiff is not entitled to one unless he can first allege some form of misconduct by defendants. (*Baxter v. Krieger* (1958) 157 Cal.App.2d 730, 732 [“Before an accounting is in order, the right to an accounting must be established.”].) As a nonborrower on the subject loan who has not pled other wrongdoing by defendants, plaintiff has not established any right to an accounting. The demurrer to this cause of action was properly sustained.

Finally, plaintiff’s last claim is for “declaratory relief,” which is really a request for an injunction. An injunction is a remedy, not a cause of action in itself. (*Camp v. Board of Supervisors* (1981) 123 Cal.App.3d 334, 356.) As plaintiff has failed to plead a cause of action against defendants, there is no basis upon which the court could have issued an injunction. The court therefore properly sustained defendants’ demurrer to this cause of action.

Plaintiff has not argued, either here or in the trial court record before us, that any of the deficiencies in the complaint could be cured by amendment. Therefore, the court did not err in sustaining defendants' demurrer without leave to amend. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.)

III

DISPOSITION

The judgment is affirmed. In the interests of justice, each party shall bear their own costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.