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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

VICTOR M. SAMANIEGO et al.,

Plaintiffs and Appellants,

v.

SPECIALIZED LOAN SERVICING,
LLC et al.,

Defendants and Respondents.

D072476

(Super. Ct. No.
37-2016-00028884-CU-OR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Kenneth J. Medel, Judge. Affirmed.

Victor M. Samaniego and Bertha A. Samaniego, in pro. per., for Plaintiffs and Appellants.

Houser & Allison and Robert W. Norman, Emilie K. Edling, for Defendants and Respondents.

Plaintiffs and appellants Victor M. Samaniego and Bertha A. Samaniego appeal from a judgment in favor of defendants and respondents Specialized Loan Servicing, LLC (Specialized) and Bank of New York Mellon (at times, Bank),¹ entered after the trial court granted defendants' motion for judgment on the pleadings without leave to amend. The court ruled the doctrine of res judicata barred all but plaintiffs' wrongful foreclosure cause of action, and that the wrongful foreclosure cause of action failed to state a cause of action. Plaintiffs have not demonstrated the trial court erred in its ruling, and accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On review of an order granting judgment on the pleadings, the appellate court usually treats as true the material facts alleged in the operative complaint and facts that may be implied or inferred from those expressly alleged. (*Haight, Brown & Bonesteel v. Superior Court* (1991) 234 Cal.App.3d 963, 968.) We do not accept as true contentions, deductions or conclusions of fact or law. (*Casiopea Bovet, LLC v. Chiang* (2017) 12 Cal.App.5th 656, 660.) Here, plaintiffs' operative first amended complaint mainly consists of arguments and legal conclusions, making it difficult to cull the material allegations. Plaintiffs do not acknowledge or set out the pertinent standard of review, and there is no indication they have summarized the material allegations of their operative pleading in their opening brief, which is unhelpful in our effort to set out the relevant

¹ Bank of New York Mellon's full party designation is Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-14.

facts. We briefly recount the background facts partly from the first amended complaint's allegations, but primarily from documents judicially noticed by the trial court.²

The Loan and Default

In August 2006, plaintiffs obtained a \$578,034 loan from Countrywide Home Loans, Inc. (Countrywide), which was secured by a deed of trust recorded (No. 2006-0586402) against property on Emerald Cliff Point in San Diego.³ The deed of trust named MERS (Mortgage Electronic Registration Systems, Inc.) as the beneficiary and nominee for the lender and its successor and assigns. In August 2008, the trustee of the deed of trust recorded a notice of trustee's sale stating in part that plaintiffs were in default under the deed of trust.

Securitization of the Loan

In March 2011, MERS executed an assignment of the deed of trust to Bank as trustee for the Certificateholders of the CWABS, Inc. Asset-Backed Certificates, Series 2006-14 trust (the trust). This assignment was part of a process of securitization, by which mortgages were pooled into trusts, the terms (as well as the obligations and rights

² Specifically, the trial court granted defendants' requests for judicial notice of recorded documents related to Bank's and plaintiffs' interests in the property, other documents filed in plaintiffs' federal court action against Bank, and docket reports as well as other orders and filings from the bankruptcy court. Plaintiffs do not challenge the court's judicial notice rulings, so we consider these documents in evaluating their claims.

³ Plaintiffs also had a junior deed of trust on the property securing a \$144,509 loan, recorded as No. 2006-0586403. Bank points out that plaintiffs confuse the deed of trust at issue with this other lien.

of the trustee) of which are governed by a pooling and servicing agreement (agreement).
The closing date for the trust was September 8, 2006.

Plaintiff Victor Samaniego's Federal Court Complaint and Bankruptcy Filings

In March 2012, plaintiff Victor Samaniego filed suit in federal court against Specialized, named as "Specialized Loan Servicing, LLC as Successor by Merger to Bank of New York Mellon fka The Bank of New York as Trustee for the Certificateholders of the CWABS, Inc. Asset-Backed Certificates, Series 2006-14 formerly known as The Bank of New York" (the federal court action). The operative complaint in the federal court action—the third amended—included causes of action for fraud, violations of the false claims act, violations of California's Unfair Competition Law (UCL; Bus. & Prof. Code, § 17200 et seq.) and quiet title. In August 2013, the district court dismissed that action with prejudice.

Between 2010 and 2016, plaintiffs filed for bankruptcy several times, some with adversary proceedings, including a proceeding by Victor Samaniego against Specialized as the servicer to Bank. The bankruptcy court dismissed the latter proceeding with prejudice in March 2015.

In May 2016, the property was sold at a foreclosure sale to the trust.

Plaintiffs' Present Complaint and Defendants' Motion for Judgment on the Pleadings

In August 2016, plaintiffs filed the present complaint against Specialized and Bank, alleging causes of action for fraud, quiet title, wrongful foreclosure, and violation of the UCL. They sought a judicial declaration concerning the validity of the loan and

notes, the deeds of trust and beneficiaries, and the foreclosure process. They also sought to cancel various instruments and assignments.⁴

Defendants moved for judgment on the pleadings on grounds the complaint was unintelligible; it failed to state facts sufficient to constitute any cause of action; the causes of action for fraud, quiet title, declaratory relief and violations of the UCL were barred by res judicata based on plaintiffs' prior federal court action that was dismissed with prejudice; and the cause of action for cancellation of instruments was not a distinct cause of action but a remedy for wrongful foreclosure. They also argued plaintiffs' history of filing frivolous lawsuits and eight bankruptcy petitions in the last seven years was evidence of bad faith and an abuse of the judicial system that the court should not encourage.

The Court's Ruling

Taking judicial notice of all of defendants' proffered documents and some of plaintiffs', the trial court granted judgment on the pleadings on the entire complaint without leave to amend. It ruled based on the dismissal of the federal court action the doctrine of res judicata barred plaintiffs' causes of action for fraud, violation of the UCL and quiet title in the present case. In part, the court's order states: "In the initial case in

⁴ The first amended complaint is missing page 14. In a footnote to their motion, defendants pointed out that page was missing both in plaintiffs' official court filing and the operative pleading served on them. Defendants stated that for purposes of their motion, they would assume the allegations on page 14 of plaintiffs' initial complaint were meant to be included in the operative pleading. It is apparent from defendants' motion that plaintiffs' first cause of action was also for fraud. The causes of action are not numbered sequentially and do not match the caption page's listing.

Federal Court, Plaintiff Victor Samaniego filed a Complaint against the same parties with essentially the same factual allegations and causes of action . . . matching identical causes of action in the present case. Both cases clearly involve the same 'primary right' asserted by Plaintiff; that Defendants had no right to foreclose on the subject house and seeking title to be resolved." The court found privity between Bertha Samaniego and Victor Samaniego, both of whom were owners of the property at issue, and ruled that despite the absence of Bertha Samaniego's name on the federal court complaint, she was an "unnamed but necessary party" and the "allegations of both Complaints as well as the trust deed support a finding [of] privity, a commonality of interest, between Mr. and Mrs. Samaniego as a matter of law." The court ruled the federal court action was resolved " 'on the merits' " so as to justify application of res judicata; the federal court judge did not dismiss the case on nonsubstantive technical grounds but addressed the substance of the complaint and articulated the inadequacy of its allegations on the merits.

The court further ruled the entire complaint, including plaintiffs' cause of action for wrongful foreclosure, failed to state a cause of action as a matter of law. The court ruled that further amendment would not cure these defects in view of plaintiffs' prior unsuccessful amendments in the federal court proceeding and the nature of the present allegations: "Given the plethora of repetitious confusing facts alleged in the [first amended complaint], there is no utility in granting leave to amend. All that Plaintiffs have to allege factually has already been alleged. The defects in the Complaint are deep and substantive and an amendment would not cure them."

Plaintiffs appeal from the ensuing judgment.

DISCUSSION

I. *Standard of Review*

"A motion for judgment on the pleadings presents the question of whether 'the plaintiff's complaint state[s] facts sufficient to constitute a cause of action against the defendant.' [Citation.] The trial court generally considers only the allegations of the complaint, but may also consider matters that are subject to judicial notice. [Citation.] 'Moreover, the allegations must be liberally construed with a view to attaining substantial justice among the parties.' [Citation.] "Our primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory.'" [Citation.] 'An appellate court independently reviews a trial court's order on such a motion.'" (*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 272.) If the order is correct on any theory of law applicable to the case, we will affirm it regardless of the considerations used by the superior court to reach its conclusion. (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216; see *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034 [ruling on a demurrer].)

II. *Principles of Appellate Review*

Plaintiffs' appellate briefing compels us to begin by reviewing settled principles of appellate review. On appeal, a judgment or an order is presumed to be correct, and plaintiffs as the parties challenging the judgment or the order must affirmatively show error. (E.g., *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) To meet this burden, plaintiffs must provide cogent legal argument in support of

their claims of error with citation to legal authority. (Cal. Rules of Court, rule 8.204(a)(1)(B), (C); *Sims v. Department of Corrections & Rehabilitation* (2013) 216 Cal.App.4th 1059, 1081.) Absent these required matters, the point is forfeited. (*Sims*, at p. 1081; *People v. Stanley* (1995) 10 Cal.4th 764, 793.)

III. *Plaintiffs Have Not Demonstrated the Court's Ruling Was Erroneous*

Plaintiffs opening brief on appeal is difficult to follow. Their factual statement is argumentative and conclusory, and their argument headings do not coherently address how and why their first amended complaint states viable causes of action, the normal inquiry on review of a judgment on the pleadings. (*Arce v. County of Los Angeles* (2012) 211 Cal.App.4th 1455, 1483, fn. 16; *Soco West, Inc. v. California Environmental Protection Agency* (2013) 213 Cal.App.4th 1511, 1514.) Plaintiffs reargue the merits of their case, impermissibly making factual assertions that they believe are favorable to their position and presenting them in a rambling, disorganized fashion throughout their briefs. This court is not required to make an independent search of the record seeking error. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Though appellate review is de novo following the grant of judgment on the pleadings, that does not mean our role is to review the adequacy of the first amended complaint's allegations and make plaintiffs' arguments for them. " 'It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.' " (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799.)

These rules apply to self-represented litigants like plaintiffs, who are entitled to the same, but no greater, consideration than other litigants and are held to the same rules of procedure. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.) As we explain, applying the above-referenced principles and appellate presumptions of correctness, we will affirm the judgment because plaintiffs' arguments do not establish the court's ruling was in error.

A. Plaintiffs Do Not Show the Court Erred by Ruling Res Judicata Barred the Causes of Action for Fraud, Violation of the UCL and Quiet Title

Plaintiffs in their opening brief never mention the principles of res judicata, which the court ruled barred all but plaintiffs' wrongful foreclosure cause of action. We presume the court correctly followed applicable law on this point. (See *Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 956.) Though in reply, plaintiffs assert defendants "must have standing to invoke the doctrine of res judicata" (capitalization and emphasis omitted), we do not address arguments made for the first time in a reply brief. (*Lafferty v. Wells Fargo Bank, N.A.* (2018) 25 Cal.App.5th 398, 428, citing *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466.) Even if we were to consider those arguments, their apparent factual premise is made without record citation. And the argument is at bottom a rehash of plaintiffs' opening brief argument that defendants lack

standing, a point which plaintiffs do not establish has relevance to application of the res judicata doctrine.⁵

Plaintiffs' failure in their opening brief to address the merits of one of the trial court's reasons for its ruling suffices to affirm the court's entry of judgment on the pleadings as to plaintiffs' causes of action for fraud, violation of the UCL and quiet title.

(Lafferty v. Wells Fargo Bank, N.A., supra, 25 Cal.App.5th at p. 428.)

B. Plaintiffs Have Not Demonstrated They Can Allege Viable Causes of Action for Wrongful Foreclosure, Cancellation of Instruments or Declaratory Relief

We reach the same conclusion as to plaintiffs' cause of action for wrongful foreclosure. Plaintiffs' briefing does not refer to the allegations of their complaint or attempt to explain how its allegations are sufficient to state a viable cause of action against defendants for wrongful foreclosure or any other cause of action. They do not inform us of the theory of wrongful foreclosure or the elements of such a cause of action.

(See Yvanova v. New Century Mortgage Corp. (2016) 62 Cal.4th 919, 929; Chavez v.

Indymac Mortgage Services (2013) 219 Cal.App.4th 1052, 1062.) We affirm the judgment on this deficiency alone.

But even if we turn to the merits, plaintiffs cannot prevail. Plaintiffs' wrongful foreclosure cause of action challenges the foreclosure as "void," in part because the sale

⁵ The standing argument in any case lacks relevance to whether plaintiffs' pleading states a viable claim, as plaintiffs cite authorities for the random propositions that defendants lack standing "to sue" or "maintain a suit against a plaintiff," and cannot collect a "local tax."

was not conducted by a "duly appointed" trustee and it did not comply with California law. They allege the "purported Substitution of trustee was not signed by a beneficiary under the deed of trust." These claims appear to be based on allegations that Countrywide was a "failed Bank" and thus without any beneficial interest in the note or authority to transfer any interest to Bank; and the assignment of the trust deed to Bank, as well as a recorded substitution of trustee, occurred after the trust's September 2006 closing date. They cite to *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079 as holding a late assignment would be void, and a borrower has standing to challenge a nonjudicial foreclosure sale based on alleged violations of a pooling and servicing agreement. Though we must accept the truth of plaintiffs' factual allegations, we are not required to accept the truth of their legal conclusions and contentions. (*Yhudai v. IMPAC Funding Corp.* (2016) 1 Cal.App.5th 1252, 1257; *Casiopea Bovet, LLC v. Chiang, supra*, 12 Cal.App.5th at p. 660; *Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 173.) And we disregard facts that are contradicted by exhibits of which the court took judicial notice. (*Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505.)

Plaintiff's allegations that Countrywide Home Loans, Inc. was failed, "no longer in existence," or "ceased to exist" are contradicted by judicially-noticed records showing it to be an active corporation as of February 2017. To the extent plaintiffs' arguments of error are premised on their factual contentions regarding Countrywide, they have not established error.

Their allegations otherwise do not establish they have a valid claim for wrongful foreclosure based on a void assignment due to the asserted fact it was made years after the trust's closing date. This court (*Saterbak v. JPMorgan Chase Bank* (2016) 245 Cal.App.4th 808, 815) and others (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 43; *Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal.App.5th 802, 817) have held that such an assignment is merely voidable, declining to follow *Glaski*. (*Saterbak*, at p. 815, fn. 5; *Kalnoki*, at p. 43.)

Plaintiffs purport to allege a cause of action for cancellation of instruments. They fail to state a cause of action, however, assuming such a cause of action exists, 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 v. American Sav. & Loan Assn.* (1971) 15 Cal.App.3d 112, 117; *Saterbak v. JPMorgan Chase Bank, N.A.*, *supra*, 245 Cal.App.4th at p. 819; see *In re Worcester* (9th Cir. 1987) 811 F.2d 1224, 1230.) They do not allege tender, and for that reason, plaintiffs fail to state a claim for cancellation of written instruments.

Finally, since the property has been sold, plaintiffs have no prospective claims appropriate for declaratory relief. The allegations of that claim are in any event duplicative of their wrongful foreclosure claim. (*Mendoza v. JPMorgan Chase Bank, N.A.*, *supra*, 6 Cal.App.5th at pp. 820-821.)

IV. *Denial of Leave to Amend*

The trial court granted defendants' motion without leave to amend. Plaintiffs do not meaningfully challenge that aspect of its ruling on appeal,⁶ and thus they do not specify the allegations they would add or change to correct any defect, or what additional facts they could allege that would support a cause of action against defendants. The burden is on plaintiffs to affirmatively demonstrate how the complaint can be amended and how the amendment will cure the deficiencies. (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 994.) They have not done so here.

⁶ Though in reply plaintiffs include an argument titled, "The trial court erred when it denied the plaintiff leave to amend" (some capitalization omitted), they merely recite without any argument the dates the defendants filed a motion to strike, their answer, and their motion for judgment on the pleadings.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

10/02/2018

KEVIN J. LANE, CLERK

By 
Deputy Clerk

