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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

OSCAR JOBE BUSTAMANTE,

Plaintiff and Appellant,

v.

U.S. BANK NATIONAL ASSOCIATION,
as Successor Trustee, etc., et al.,

Defendants and Respondents.

G051222

(Super. Ct. No. 30-2013-00680885)

O P I N I O N

Appeal from a judgment and order of the Superior Court of Orange County, Frederick Paul Horn, Judge. Affirmed in part, reversed in part and remanded with directions.

Rimon PC and Omero Banuelos for Plaintiff and Appellant.

Kutak Rock LLP, Jeffrey S. Gerardo, Steven M. Dailey and Antoinette P. Hewitt for Defendants and Respondents.

INTRODUCTION

Oscar Bustamante appeals from a judgment dismissing his lawsuit against respondents U.S. Bank, N.A., and Wells Fargo Bank, N.A., after the trial court sustained their demurrer to his second amended complaint without leave to amend. Bustamante's complaint followed a well-worn path trodden by many former homeowners who lost their homes in the wave of foreclosures during the recession. As had many before him, he alleged a defective transfer of his note and deed of trust to a real estate trust, robo-signed recorded documents, and other causes of action typical of these lawsuits.

In the past, these complaints have not fared well. In February, however, the California Supreme Court issued its opinion in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919 (*Yvanova*), which altered the legal landscape to some extent. Although declining to decide some important and vexing questions in this area, the court held that a borrower could base a cause of action for wrongful foreclosure on a void (but not voidable) trustee's sale. The court sent the case back to give the plaintiff a chance to amend the complaint to see whether she could allege the necessary facts.

We believe Bustamante should be given the same chance. What makes the record in this case unusual is the number of times – three, to be exact – Wells Fargo apparently transferred its interest in Bustamante's deed of trust to U.S. Bank. It is thus entirely possible that the trustee's sale was noticed, conducted, and recorded by an unauthorized party. If it was, then the trustee's sale would have been void, and *Yvanova* would apply; that is, Bustamante could state a cause of action for wrongful foreclosure. Likewise, if the trustee's sale was void, the deed upon sale may have to be cancelled. Accordingly the order sustaining the demurrer without leave to amend, issued before the decision in *Yvanova*, is reversed as to these two causes of action, and Bustamante may amend them to allege facts necessary to establish wrongful foreclosure and cancellation of instruments.

The demurrer to the rest of the second amended complaint, however, was correctly sustained without leave to amend. Bustamante had three chances to state causes of action for negligence, unfair business practices and the like, and he has been unable to do so. The order sustaining the demurrer to these causes of action without leave to amend is affirmed.

FACTS

Bustamante borrowed \$750,000 from Wells Fargo in 2005. The loan was secured by a deed of trust on his residence in Laguna Niguel. The trustee was Fidelity National Title Insurance Company (Fidelity National).

Bustamante attached an assignment of deed of trust dated May 28, 2010, from Wells Fargo to U.S. Bank as an exhibit to the second amended complaint. There is no recording stamp on this document.¹

First American Title Insurance Company as “agent of the current beneficiary” recorded a notice of default and election to sell on December 23, 2010.² In January 2011, Wells Fargo recorded a substitution of trustee dated January 14, 2011 – First American Trustee Servicing Solutions, LLC (First American), for Fidelity National. One day later, Wells Fargo recorded an assignment of deed of trust dated January 18, 2011, to U.S. Bank.

Bustamante alleged that another notice of trustee’s sale was recorded, but he did not give a date or attach a copy to the complaint.³ Another assignment of deed of trust from Wells Fargo to U.S. Bank dated September 27, 2012, was recorded in October 2012. The home was sold at public auction on June 21, 2013, and a deed upon sale was

¹ The assignment of a deed of trust need not be recorded. (*Kan v. Guild Mortgage Co.* (2014) 230 Cal.App.4th 736, 744, fn. 2.)

² Although the “current beneficiary” was not identified, a person purporting to be an officer of Wells Fargo Bank, N.A., signed the declaration required by the version of Civil Code section 2923.5 in effect at the time. The document did not mention U.S. Bank.

³ Respondents stated in their demurrer to the second amended complaint that the notice of sale was recorded on August 20, 2012.

recorded on July 3, 2013. The deed recited that U.S. Bank was the grantee and foreclosing beneficiary. First American was the trustee and grantor.

Bustamante sued Wells Fargo, First American, and U.S. Bank in October 2013, alleging nine causes of action all relating to the foreclosure.⁴ He filed his second amended complaint, the operative one, in May 2014, after respondents' demurrers to the original complaint and to the first amended complaint were sustained with leave to amend. The causes of action were "breach of statute," (i.e., portions of the Homeowners Bills of Rights, Civ. Code, §§ 2920.5, 2923.4–2923.7, 2924, 2924.9–2924.12, 2924.15, 2924.17–2924.20), wrongful foreclosure, cancellation of instruments, negligence, unfair business practices (Bus. & Prof. Code, §§ 17200 et seq.) and declaratory relief. The wrongful foreclosure cause of action was based on an alleged lack of legal authority to foreclose on Bustamante's property.

U.S. Bank and Wells Fargo demurred for the third time, and this time the demurrer was granted without leave to amend. The subsequent judgment included a lengthy explanation of the reasons for sustaining the demurrer.

DISCUSSION

On appeal, Bustamante asserts he properly alleged the six causes of action of the second amended complaint and, in any event, he should have been permitted to amend again. "In reviewing an order sustaining a demurrer '[w]e independently evaluate the complaint, construing it liberally, giving it a reasonable interpretation, reading it as a whole, and viewing its parts in context. [Citation.] Treating as true all material facts properly pleaded, we determine de novo whether the factual allegations of the complaint are adequate to state a cause of action under any legal theory" [Citation.] [¶] We review the trial court's result for error, not its legal reasoning. [Citation.] If a proper

⁴ This was not Bustamante's first foray into litigation. He sued Wells Fargo in Orange County Superior Court in September 2012. He dismissed this case without prejudice in September 2012. He also filed three bankruptcies, one in May 2010, a second one in September 2010, and the last one in September 2012. The first and third bankruptcies were dismissed. Bustamante received a discharge in the second bankruptcy.

ground exists for sustaining the demurrer, we affirm ‘even if the trial court relied on an improper ground, whether or not the defendants asserted the proper ground in the trial court.’ [Citation.] On the other hand, ‘[i]f the complaint shows entitlement to relief under any possible legal theory, the trial court erred in dismissing the action.’ [Citation.]” (*Fonteno v. Wells Fargo Bank, N.A.* (2014) 228 Cal.App.4th 1358, 1364-1365.)

As to leave to amend, we review the trial court’s decision for abuse of discretion. The appellant has the burden of explaining how the complaint can be amended to state a cause of action. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.)

I. Wrongful Foreclosure

Bustamante based his wrongful foreclosure cause of action on three main theories. First, the people who executed and notarized the assignments of deed of trust were not Wells Fargo employees authorized to do so but were instead robo-signers and robo-notaries. Thus, none of the assignments was valid. Second, his note and deed of trust were improperly transferred into a real estate trust, invalidating the original deed of trust. Therefore nobody owned his debt or had a right to foreclose. Finally, the banks failed to comply with the California Homeowners Bill of Rights (HBOR).

After the ruling on the demurrer to Bustamante’s second amended complaint, wrongful foreclosure law underwent a significant change, with the issuance of the California Supreme Court’s opinion in *Yvanova*. The question *Yvanova* presented was “‘In an action for wrongful foreclosure on a deed of trust securing a home loan, does the borrower have standing to challenge an assignment of the note and deed of trust on the basis of defects allegedly rendering the assignment void?’” (*Yvanova, supra*, 62 Cal.4th at p. 926.) The court held that “[i]f a purported assignment necessary to the chain by which the foreclosing entity claims that power is absolutely void, meaning of no legal force or effect whatsoever [citations], the foreclosing entity has acted without legal authority by pursuing a trustee’s sale, and such an unauthorized sale constitutes wrongful

foreclosure.” (*Id.* at p. 935.) The court expressly declined to decide whether a transfer to a real estate trust after its closing date constituted a void or a voidable transfer. (*Id.* at p. 931.)

The elements of the tort of wrongful foreclosure are: “(1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.” (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 104.)⁵ “A foreclosure initiated by one with no authority to do so is wrongful for purpose of such an action.” (*Yvanova, supra*, 62 Cal.4th at p. 929.)

In light of the new *Yvanova* opinion, which of course was not available when this case was decided, we think it advisable to return the case to the trial court to determine whether Bustamante can state a cause of action for wrongful foreclosure. (See *Yvanova, supra*, 62 Cal.4th at p. 943.) We caution, however, that in order to survive a demurrer, a plaintiff must plead facts, not contentions, deductions, or conclusions of either fact or law. (See *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) Conclusory allegations that an assignment was void or that someone was not an employee authorized to execute documents without factual underpinnings will not be enough.

In addition, the three assignments from Wells Fargo to U.S. Bank have not been explained, and their effect has not been briefed. If the first one from May 2010 was effective, then Wells Fargo had no interest in Bustamante’s deed of trust, and all the subsequent transfers and substitutions made in its name, such as the one that replaced

⁵ In *Yvanova*, the court expressly declined to consider whether the plaintiff had to allege tender to state a cause of action for wrongful foreclosure. It also declined to address prejudice as an element of the tort. (*Yvanova, supra*, 62 Cal.4th at p. 929, fn. 4.)

We asked the parties to submit supplemental briefing on the effect of *Yvanova* on this appeal.

Fidelity National with First American as trustee, lacked authority. (See *Pro Value Properties, Inc. v. Quality Loan Service Corp.* (2009) 170 Cal.App.4th 579, 583; *Dimock v. Emerald Properties* (2000) 81 Cal.App.4th 868, 871 [substituted-out trustee without power to conduct trustee's sale; sale void].) The notice of trustee's sale that was supposedly recorded in August 2012, is also missing – an important link in “the chain by which the foreclosing entity claims that power[.]” (*Yvanova, supra*, 62 Cal.4th at p. 935.) This was, presumably, one of the pre-foreclosure documents that must be filed for a valid sale. We are thus unable to tell what entity recorded it and on what entity's authority. Under Civil Code section 2924, subdivision (a)(4), only the mortgagee, trustee, or other authorized person may record a notice of sale. If the notice of sale was recorded on behalf of Wells Fargo and Wells Fargo no longer had any interest in the deed of trust, the notice of sale and the sale itself were void. (Cf. *Bank of America v. La Jolla Group II* (2005) 129 Cal.App.4th 706, 711 [sale beneficiary had no power to conduct invalid].) None of this can be sorted out on the record before us, and we judge the matter murky enough to warrant another shot at amending the complaint.

II. Cancellation of Instruments

Bustamante initially alleged that every document from his initial deed of trust through the trustee's deed on sale is invalid and void. Later on in the same cause of action, however, he is more precise: the instruments to be cancelled are the substitution of trustee, the notice of default, the assignment of the deed of trust (which one, unspecified), the first and second notices of trustee's sale, and the trustee's deed upon sale. Civil Code section 3412 provides, “A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.”

Obviously, the initial deed of trust was not void, since Bustamante has admitted that he borrowed money from Wells Fargo, securing the debt with a deed of

trust on the residence. He never alleged he paid this debt. The 2010 notice of default simply records an undisputed fact: Bustamante defaulted on his loan. He did not allege he was *not* in default when the notice was recorded. He has not alleged any facts showing how recording notices of trustee's sale injured him. He has not specified the assignment of deed of trust that should be cancelled, let alone any facts that would support a cancellation of any one of them.

That leaves the deed upon sale. Although Civil Code section 2924, subdivision (c), states that the recital of statutory compliance in a trustee's deed of sale is "conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice," we cannot say as a matter of law on this record that U.S. Bank fits this description. Its involvement in these multiple assignments from Wells Fargo leaves the question of notice unresolved. (See, e.g., *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1250-1251 [BFP pays value for property without notice of adverse interest or any irregularity in sale proceedings].) The fate of this cause of action depends on Bustamante's ability to allege a viable cause of action for wrongful foreclosure, one that would also encompass a cancellation of the trustee's deed upon sale.

III. Remaining Causes of Action

A. Violation of the Homeowner's Bill of Rights

"The Homeowner Bill of Rights (Civ. Code, §§ 2920.5, 2923.4–2923.7, 2924, 2924.9–2924.12, 2924.15, 2924.17–2924.20) (HBOR), effective January 1, 2013, was enacted 'to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain, available loss mitigation options, if any, offered by or through the borrower's mortgage servicer, such as loan modifications or other alternatives to foreclosure.' (§ 2923.4, subd. (a).)" (*Valbuena v. Ocwen Loan Servicing, LLC* (2015) 237 Cal.App.4th 1267, 1272.)

When respondents demurred to the first amended complaint, the court sustained the demurrer to the cause of action for violation of the HBOR, saying,

“[Bustamante] failed to clearly identify the specific statute violated or the specific conduct that allegedly violated such statute.” The court gave Bustamante leave to amend his complaint; it would appear obvious that such an amendment for this cause of action would include allegations of specific misconduct attached to each allegedly violated statute.

The second amended complaint contained no such allegations. Instead, Bustamante discusses the statutes in general and once again fails to link a violation of the statute to specific misconduct. In addition, the HBOR became effective on January 1, 2013; conduct occurring before that date cannot violate the statute. (Civ. Code, § 3; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840-841.) So, for example, none of the assignments of deed of trust or substitutions of trustee that are exhibits to the complaint – all of which occurred before January 1, 2013 – could form the basis of a cause of action for statutory violations.

Bustamante cited the following Civil Code sections in the second amended complaint as the ones respondents violated: section 2923.5, subdivisions (a) and (b); section 2923.6, subdivisions (c) and (d); section 2923.7 subdivision (a); section 2924, subdivision (a)(6); and section 2924.17, subdivisions (a) and (b). Each of these subdivisions became effective as of January 1, 2013. They do not apply retroactively. Bustamante therefore had to allege a specific violation of these statutes occurring after that date. He failed to do so.

On appeal, Bustamante identified only violations of Civil Code sections 2923.5, subdivision (a), and 2924.17, subdivision (a), as having been adequately pleaded.⁶ The version of Civil Code section 2923.5, subdivision (a), in effect when the notice of default was recorded prohibited a mortgagee, trustee, or beneficiary from filing

⁶ To the extent that he alleged failures to comply with other components of the HBOR, Bustamante has abandoned them as issues on appeal by failing to submit argument and authority regarding them. (See *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 538.)

(subsequently changed to “recording”) a notice of default until 30 days after “initial contact” or “due diligence.”

The only notice of default Bustamante alleged was dated December 21, 2010, and recorded on December 23, 2010. Bustamante filed for Chapter 7 bankruptcy protection on September 15, 2010. The bankruptcy case was closed on July 20, 2011. At the time the notice of default was recorded, Bustamante was in bankruptcy. Under Civil Code section 2923.5, subdivision (h)(3), as then effective, subdivision (a) did not apply.

Civil Code section 2924.17, by its terms applies to “a declaration recorded pursuant to [Civil Code] section 2923.5 or, until January 1, 2018, pursuant to [Civil Code] section 2923.55, a notice of default, notice of sale, assignment of a deed of trust, or substitution of trustee . . . or a declaration or affidavit filed in any court relative to a foreclosure proceeding[.]” This code section became effective on January 1, 2013. Bustamante has not alleged documents recorded on or after January 1, 2013, that fall into any of these categories. He has thus failed to allege HBOR violations.

The trial court told Bustamante what he had to allege to overcome respondents’ demurrer to the cause of action for HBOR violations. Since he did not do it, the implication is that he cannot. The demurrer was properly sustained to this cause of action without leave to amend.

B. Negligence

A cause of action for negligence requires allegations of duty, breach of duty, causation, and resulting damages. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 918.) A financial institution owes no duty of care to a borrower unless its involvement with the loan exceeds the scope of a conventional lender of money. (*Nymark v. Heart Federal Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089.)

Bustamante alleged that the breach of duty respondents committed was their failure to abide by what he called “the California Bill of Rights Act,” presumably the HBOR. As we have discussed above, the HBOR did not become effective until

January 1, 2013, and Bustamante did not allege any conduct violating the HBOR after that date, even assuming that a violation of the HBOR constitutes negligence. In addition, he alleged that respondents “demand[ed] payment on a loan when the fraudulent chain of assignments and title stripped any authority to collect on the loan” and “fail[ed] to charge the proper interest and apply payments correctly caus[ing] [Bustamante] to overpay in interest, penalties, and fees leading to foreclosure.” Demanding payment of a loan, charging interest, and applying payments are all within the scope of a conventional lender of money. (See *Sierra-Bay Fed. Land Bank Assn. v. Superior Court* (1991) 227 Cal.App.3d 318, 334-335.) They do not create a duty of care between borrower and lender. The demurrer to this cause of action was properly sustained.

C. Unfair Business Practices

Business and Professions Code section 17200 (Unfair Competition Law, “UCL”) defines unfair competition as “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising[.]” “Because Business and Professions Code section 17200 is written in the disjunctive, it establishes three varieties of unfair competition – acts or practices which are unlawful, or unfair, or fraudulent. . . .’ [Citations.]” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.)

Bustamante’s cause of action for unfair business practices concentrates on the statute’s “fraudulent” prong, alleging that Wells Fargo and U.S. Bank have engaged in conduct likely to deceive consumers, that is, “unsafe, unsound, and deceptive business practices with respect to mortgage loan servicing, assignment of notes and deeds of trust, foreclosure of residential properties and related matters[.]” The “fraudulent” prong of the UCL requires only a showing that members of the public are likely to be deceived. Actual deception and reasonable reliance are not necessary. (*Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 81.)

Bustamante's cause of action required him to allege practices that (1) were likely to deceive members of the public *and* (2) caused injury to himself and loss of his money or property. (*See Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 228, 232; Bus. & Prof. Code, § 17204.) He alleged 16 practices, some of which were duplicates. All of them failed to meet one or the other of the two criteria – or both – or otherwise failed to support a cause of action.

To take the easiest one first, Bustamante alleged respondents caused false affidavits regarding mortgages to be filed in state and federal courts. Even if this allegation is true, these acts are absolutely privileged under Civil Code section 47, subdivision (b), as publications made in a judicial proceeding. (*See Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 360-361.) He cannot base a cause of action on this conduct. The same is true of the allegation that respondents filed improperly notarized documents in courts.

Bustamante also alleged that respondents instituted improper and premature foreclosure proceedings to generate unwarranted fees; failed to comply with Civil Code section 2923.5; failed to comply with the HBOR; misrepresented foreclosure status to borrowers; filed improperly notarized documents in records offices; initiated foreclosures without ensuring the necessary documents were endorsed; failed to devote enough staff or “adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training to comply with the law” to the foreclosure process; and failed to comply with treasury department orders and directives.

Bustamante failed to allege, however, how any of these practices caused injury to him and loss of his money or property. He did not allege that *he* paid any unwarranted foreclosure fees. We have already determined that Civil Code section 2923.5 did not apply to Bustamante; at the relevant time, he was in bankruptcy. He could not have been injured by any failure to comply with this statute. We have also

determined that the HBOR did not apply to Bustamante; he has alleged no violation of the statutes occurring after their effective dates. He has not alleged any injury or loss of money or property based on a misrepresentation of his foreclosure status, whatever that may mean. How did respondents' failure to devote enough staff, oversight, internal controls, and the rest to the foreclosure process injure him and cost him money? How did failing to comply with treasury department orders and directives injure him? Bustamante has alleged no facts linking any of these allegedly fraudulent practices to his injury or the loss of his money or property.

Similarly, Bustamante has failed to allege practices likely to deceive members of the public. Demanding payment for nonexistent debts would certainly be wrong, but it is not deceptive. Most homeowners know whether they have a debt or not. How is failing to disclose a principal in violation of Civil Code section 1095⁷ likely to deceive members of the public? Moreover, Bustamante did not allege that he lost money or property as a result of a demand for a nonexistent debt. For example, he did not allege that *he* paid a nonexistent debt. Likewise he did not explain how he lost money or property because respondents failed to disclose a principal. We cannot find a cause of action here.

Finally, Bustamante alleged a cluster of practices centered on the foreclosure process. These were: “[e]xecuting and recording false and misleading documents”; “[e]xecuting and recording documents without the legal authority to do so”; “[a]cting as beneficiaries and trustees without the legal authority to do so”; and “[f]ailing to give proper notice of a trustee’s sale and the postponement of the sale”

Under Civil Code section 2924, subdivision (d)(1), [t]he mailing, publication, and delivery of notices required” by section 2429 are privileged under Civil Code section 47. So is the “performance of the procedures set forth” in title 14 (Lien),

⁷ Civil Code section 1095 provides, “When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.”

chapter 2 (Mortgage), article 1 (Mortgages in General) of the Civil Code. (Civ. Code, § 2924, subd. (d)(2).) This privilege covers recording the notices of default (*id.*, § 2924, subd. (a)(1)), recording the notices of trustee’s sale (*id.*, § 2924, subd. (a)(3), and postponing the sale. (*Id.*, § 2924g.) Bustamante did not allege any other activities resulting in loss of his money or property.

The privilege accorded by Civil Code section 47 in this context is a qualified privilege, applying to publications made “without malice.” (Civ. Code, § 47, subd. (c); see *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 335-338 (*Kachlon*).) The Civil Code defines “actual malice” as “that state of mind arising from hatred or ill will toward the plaintiff” (Civ. Code, § 48a, subd. (4)(d); see *Kachlon, supra*, 168 Cal.App.4th at p. 336.) Bustamante did not allege any facts supporting a conclusion that Wells Fargo and U.S. Bank executed and recorded any of the documents he attached to the pleading or acted during the foreclosure process with hatred or ill will toward him. He therefore failed to allege facts to overcome the privilege granted to trustees, mortgagees, and beneficiaries under Civil Code section 2924, subdivision (d).

Bustamante’s allegations in this cause of action comprise a laundry list of purported lending practices without regard to whether they were either likely to deceive members of the public or injurious to him. He did not state a cause of action under the “fraudulent” prong of Business & Profession Code section 17200, and the demurrer was properly sustained as to this cause of action, without leave to amend after three unsuccessful tries.

D. Declaratory Relief

The controversy alleged in the declaratory relief cause of action is the legality of the foreclosure and the validity of the liens against the residence before foreclosure. “Declaratory relief operates prospectively to declare future rights, rather than to redress past wrongs. [Citation.] Where . . . a party has a fully matured cause of action for money, the party must seek the remedy of damages, and not pursue a

declaratory relief claim.” (*Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1497.)

Assuming Bustamante can state a cause of action for wrongful foreclosure, the events of which he complains are in the past. Accordingly, he cannot state a cause of action for declaratory relief based on these events. (See *Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1014.) The second amended complaint does not allege any future rights to be adjudicated, and Bustamante has not suggested he bases this cause of action on any potential future event. The demurrer to the cause of action for declaratory relief was properly sustained without leave to amend.

DISPOSITION

The judgment is reversed. The matter is remanded to the trial court with instructions to permit Bustamante to amend his cause of action for wrongful foreclosure and cancellation of the trustee’s deed upon sale. The order sustaining the demurrers to the causes of action for HBOR violations, negligence, unfair business practices, and declaratory relief without leave to amend is affirmed. The parties are to bear their own costs on appeal.

BEDSWORTH, J.

WE CONCUR:

O’LEARY, P. J.

MOORE, J.