DERRICK L. WORTHY et al., Plaintiffs and Appellants,
v.
CTX MORTGAGE COMPANY, LLC, Defendant and Respondent.

No. E065075.

Court of Appeals of California, Fourth District, Division Two.

Filed May 3, 2017.

APPEAL from the Superior Court of Riverside County, Super.Ct. No. RIC1411014, David E. Gregory, Temporary Judge. Affirmed.

Derrick L. Worthy and Tara L. Phillips-Worthy, in pro. per.; Stefanie N. West for Plaintiffs and Appellants.

No appearance for Defendant and Respondent.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

OPINION

HOLLENHORST, Acting P.J.

After entry of default and a subsequent evidentiary hearing, the trial court rejected the request of plaintiffs and appellants Derrick L. Worthy and Tara L. Phillips-Worthy for entry of judgment in their favor on the single cause of action asserted in their complaint for quiet title, and ordered the action dismissed with prejudice. Plaintiffs, representing themselves in propria persona, appeal, arguing that the trial court should have instead granted their request.

We affirm the judgment of dismissal. Plaintiffs have failed to carry their burden of presenting an adequate record on appeal, as there is no record of the oral proceedings at the evidentiary hearing. (Rules of Court, rule 8.120(b).) And the record, such as it is, does not demonstrate that plaintiffs could adequately plead or

prove a cause of action for quiet title; quite the contrary. The complaint was properly dismissed with prejudice.

I. FACTUAL AND PROCEDURAL BACKGROUND

The property at issue is a single family residence, located in Corona, California, which plaintiffs purchased in 2007, subject to a deed of trust. The loan secured by the deed of trust was in the amount of $687,967. The deed of trust identifies defendant and respondent CTX Mortgage Company, LLC (CTX) as the lender. The complaint also identifies as defendants "all persons or entities unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in this Complaint adverse to Plaintiff[s'] title, or any cloud upon Plaintiff[s'] title thereto" (unknown defendants).

Plaintiffs' complaint, filed November 17, 2014, asserts a single cause of action for quiet title. CTX never made an appearance in the action. On January 9, 2015, plaintiffs filed a request that default be entered against CTX. On March 11, 2015, plaintiffs filed a "Proof of Publication," purporting to show service by publication with respect to the unknown defendants. They requested entry of a court judgment in their favor as to both CTX and the unknown defendants on April 22, 2015.

Plaintiffs'"Brief in Support of Court Judgment Pursuant to Prove-Up Evidentiary Hearing" asserts that they are entitled to judgment in their favor on "three (3) distinct and specific theories of California law." The first is a variant of the separation of the note theory: that "there was a Severance, Bifurcation or Separation that had occurred and was effectuated as to the Debt, Loan and or/Promissory Note from subject Deed of Trust" as a result of the "Selling, Assigning, and/or Transferring of the Debt, Loan, and or Promissory Note without a valid corresponding Assignment of the relative Deed of Trust." The second theory is that the assignment of the loan from the lender constituted a "payment of all sums secured" by the deed of trust, so the deed of trust no longer remained in effect. Third, plaintiffs assert arguments regarding "Pooling and Servicing Non-Compliance."

After several procedural complications that we need not summarize, a "default prove-up" hearing was held on October 23, 2015. The trial court's minutes indicate that Tara L. Phillips-Worthy was sworn and examined, though no record of her testimony appears in our record. The trial court ordered the "[e]ntire action dismissed," noting in its minutes that it stated its findings on the record.

II. DISCUSSION

Plaintiffs claim the trial court erroneously refused to issue a default judgment in their favor. They have failed, however, to carry their burden of providing an adequate record of appeal to support their claim of error. More substantively, plaintiffs' purported "theories of California law," which they contend justify entry of judgment in their favor, do nothing of the sort, and in fact are contrary to California law.

As noted, the record on appeal does not include a reporter's transcript or other record of the oral proceedings at the prove-up hearing, including the testimony given by Tara L. Phillips-Worthy, and the findings that the trial court stated on the record. Plaintiffs have a duty to provide an adequate record on appeal to support their claim of error. (*In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498.) In the absence of an adequate record, the judgment is presumed correct. (*Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039.) "All intendments and presumptions are made to support the judgment on matters as to which the record is silent." (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Error must be affirmatively shown. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140.) On this basis alone, the trial court's judgment would be properly affirmed.

Furthermore, the record that we have before us affirmatively shows that the trial court's judgment of dismissal was correct. Each of the three theories that plaintiffs asserted as the bases for their claim is fatally flawed, as a matter of law. First, **the separation of the note theory has been rejected by California courts, among others. (See, e.g., *Jenkins. V. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 513, disapproved on other grounds by *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939, fn. 13**.) Second, plaintiffs can point to nothing in the record showing that they, or anyone acting on their behalf, ever paid off the loan at issue. Instead, it appears that the original lender sold or otherwise assigned its right to collect loan payments. **THE ASSIGNMENT OF THE RIGHT TO RECEIVE PAYMENTS DUE UNDER A PROMISSORY NOTE DOES NOT RESULT IN THE SATISFACTION OF THE OBLIGATION TO MAKE THOSE PAYMENTS**—it only changes who is entitled to performance of the obligation. Finally, **PLAINTIFFS LACK STANDING TO ASSERT ANY CLAIM BASED ON PURPORTED VIOLATION OF THE POOLING AND SERVICING AGREEMENT OR AGREEMENTS ASSOCIATED WITH THE SECURITIZATION OF THEIR LOAN**. (*Saterbak v. JPMorgan Chase Bank, N.A.* (2016) 245 Cal.App.4th 808, 815.) In any case, such a violation would only render the assignment of their

loan voidable (not void), and would not entitle plaintiffs to judgment in their favor on their asserted claim. (*Ibid.*)

In short, the circumstance that no defendant appeared to defend the action does not entitle plaintiffs to judgment in their favor, their arguments to the contrary notwithstanding. Their complaint does not state a valid cause of action, because the legal theories on which it rests are incompatible with California law. Had a defendant appeared, the complaint properly would have been dismissed on demurrer. As things stand, the trial court acted appropriately by refusing to enter a default judgment in plaintiffs' favor, and instead dismissing the complaint without leave to amend.

III. DISPOSITION

The judgment is affirmed. In the interest of justice, the parties shall each bear their own costs on appeal. (Rules of Court, rule 8.278(a)(5).)

MILLER and CODRINGTON, JJ., concurs.