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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

NICHOLAS KFOURI, Plaintiff and Appellant, v. JP MORGAN CHASE BANK, N.A., Defendant and Respondent.	B261183 (Los Angeles County Super. Ct. No. BC499087)

APPEAL from an order and judgment of the Superior Court of Los Angeles County. Richard L. Fruin, Judge. Affirmed.

Nicholas Kfouri, in pro. per., for Plaintiff and Appellant.

Bryan Cave and Glenn J. Plattner for Defendant and Respondent.

* * * * * *

After a lender initiated foreclosure proceedings against a homeowner for falling behind in his mortgage payments, the homeowner paid the $5,657 in arrearages, and the lender halted the foreclosure. The homeowner nevertheless sued the lender. After the homeowner refused to comply with the lender's second set of requests for discovery, refused to comply after the lender filed motions to compel, refused to comply after the lender refiled its motions to compel, and refused to comply after the trial court ordered him to comply, the trial court issued terminating sanctions and dismissed the case. The homeowner appeals. We conclude the trial court did not abuse its discretion and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

In August 1990, Nicholas Kfouri (plaintiff) borrowed $86,400 from Coast Savings and Loan Association (Coast Savings) secured by a deed of trust on his home in Compton, California (the property). In March 2012, defendant JP Morgan Chase Bank, N.A. (Chase), as the successor to Coast Savings, directed the current trustee to record a notice of default, the first step in the foreclosure process, because plaintiff had fallen $5,856.05 behind in his mortgage payments. In May 2012, plaintiff paid Chase $5,657 to reinstate his loan. A few days later, Chase recorded a rescission of its notice of default.

II. Procedural Background

A. Complaint

In January 2013, plaintiff sued Chase for slander of title, cancellation and expungement of a recorded instrument, and

money had and received.[1] In his complaint, plaintiff alleged that he made all of his mortgage payments on time, that Chase failed to credit these timely payments to his account, and that Chase had acted wrongfully in initiating foreclosure proceedings on the property.

B. Discovery

In February 2014, Chase served four discovery requests on plaintiff: (1) a second set of requests for admissions; (2) a second request for production of documents; (3) a second set of form interrogatories; and (4) a second set of special interrogatories. Plaintiff did not respond to any of these requests, so in April 2014, Chase filed a motion to deem admissions admitted (regarding its first discovery request) and three separate motions to compel responses (regarding each of its remaining requests). Chase noticed the motions for hearing on May 5, 2014, which was 15 days prior to the trial date of May 19, 2014. Plaintiff never responded to or complied with the pending discovery requests.

The trial court, on its own, moved the hearing date from May 5, 2014, to May 8, 2014. At the May 8, 2014 hearing, the court realized that its order continuing the hearing had rendered Chase's motions procedurally improper under Code of Civil Procedure section 2024.020.[2] (§ 2024.020, subd. (a) ["motions concerning discovery [should be] heard on or before the 15th day[] before the date initially set for . . . trial"].) Accordingly, the court

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1 Plaintiff also sued Chase for an accounting, and the trial court later sustained Chase's demurrer to that claim without leave to amend.

2 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

denied Chase's motions "without prejudice."

The trial court twice continued the trial date, initially to July 2014, and eventually to January 2015.

In August 2014, Chase refiled its motion to deem admissions admitted and its three motions to compel responses. Plaintiff never responded to or complied with the pending discovery requests, and did not respond to Chase's renewed motion. Following a hearing at which plaintiff elected not to appear, the trial court on September 4, 2014, granted Chase's motion to deem all but one requested admission admitted and granted two of Chase's motions to compel (that is, its motions to compel responses to the special interrogatories and to compel the production of documents). The court denied Chase's motion to compel responses to the form interrogatories. The trial court granted plaintiff 20 days to provide responses, starting on the day plaintiff was served with the court's order to compel (which was September 11, 2014). Plaintiff never complied with the trial court's order.

On October 15, 2014, Chase filed a motion for terminating sanctions. Plaintiff did not file any opposition to the motion. Following a hearing at which plaintiff again elected not to appear, the trial court granted the motion to dismiss the case, finding that "no lesser sanction has been effective in obtaining discovery responses from plaintiff."

After the trial court entered a judgment of dismissal, plaintiff filed a timely notice of appeal.

DISCUSSION

Plaintiff argues that the trial court erred in dismissing his case as a sanction for his discovery abuse. A trial court has "broad" discretion in deciding whether to issue terminating

sanctions (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604 (*Lopez*)), and we review such orders for an abuse of that discretion (*ibid.*).

Under the Civil Discovery Act, Code of Civil Procedure section 2016.010 et seq., a party may propound discovery asking to inspect documents, seeking responses to interrogatories, or requesting that a party admit or deny certain facts. (§§ 2031.010 [document inspection], 2030.010-2030.090 [interrogatories], 2033.010 [requests for admissions].) If the party does not receive a response to its discovery request(s), the party can (1) move the trial court to issue an order compelling a response (§§ 2031.300, subd. (b) [document inspection], 2030.290, subd. (b) [interrogatories]), or, as to requests for admissions, an order deeming the requested admissions admitted (§ 2033.280, subd. (b)); or (2) seek sanctions for "misuse of the discovery process" (§ 2023.030), which includes "[f]ailing to respond . . . to an authorized method of discovery" (§ 2023.010, subd. (d)) and "[d]isobeying a court order to provide discovery" (*id.*, subd. (g)).

Sanctions can be monetary, evidentiary, issue, or terminating. (§ 2023.030; *Lopez*, *supra*, 246 Cal.App.4th at p. 604.) Sanctions are not designed to punish (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992), but instead to "prevent abuse of the discovery process" and, if possible, ensure compliance (*McGinty v. Superior Court* (1994) 26 Cal.App.4th 204, 210). Because "terminating sanction[s are] a drastic penalty," they are to "be used sparingly" (*Lopez*, at p. 604), although a court "is not required to have infinite patience . . ." (*Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 Cal.App.4th 1058, 1069). In light of these considerations, terminating sanctions "should generally not be imposed until the

[trial] court has attempted less severe alternatives and found them to be unsuccessful and/or the record clearly shows lesser sanctions would be ineffective." (*Lopez*, at p. 604.)

The trial court did not abuse its discretion in imposing terminating sanctions in this case because the record clearly supports its finding that "no lesser . . . sanction will be effective." Plaintiff did not respond to the four sets of discovery requests at issue in this case after Chase propounded them, after Chase's initial motions to compel, after Chase's renewed motions to compel, and after the trial court's issuance an order compelling discovery. Plaintiff's persistent refusal to respond to repeated requests for discovery, despite multiple opportunities to do so, provided an ample basis for the trial court's finding that sanctions short of dismissal would be ineffective. Although plaintiff was without counsel for much of this time, we are not permitted to give pro se litigants any greater leeway in fulfilling their discovery obligations. (*Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193; *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795.)

Plaintiff raises what can be grouped into four categories of objections to this conclusion. First, citing *Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568 (*Pelton-Shepherd*), he argues that Chase's motion was procedurally defective. We disagree. In *Pelton-Shepherd*, a party filed a motion to compel after discovery had closed; the appellate court held the trial court abused its discretion in hearing that motion unless that court first reopened discovery. (*Id.* at pp. 1587-1589.) Chase's motion in this case was filed while discovery was still ongoing and was properly set for a hearing 15 days before trial. It was the *trial court* that

moved the hearing three days closer to trial, and the trial court that, realizing its mistake, denied Chase's otherwise timely motion without prejudice to renewing that motion.

Second, plaintiff argues that Chase's underlying requests for discovery are "overbroad." Plaintiff waived all objections to Chase's discovery requests when he did not respond to them. (§§ 2030.290, subd. (a), 2031.300, subd. (a) & 2033.280, subd. (a).) He has also forfeited any challenge to these orders on appeal by "failing to adequately support [his overbreadth argument] with argument and relevant legal authority." (*DP Pham LLC v. Cheadle* (2016) 246 Cal.App.4th 653, 674.)[3]

Third, plaintiff asserts that terminating sanctions are excessive. We reject that assertion for the reasons stated above.

Lastly, plaintiff makes a number of arguments that have no bearing on our analysis of whether the trial court abused its discretion in issuing terminating sanctions. Consequently, we have no occasion to reach plaintiff's arguments that (1) Chase's attorneys "lack credibility" and are "gangsters"; (2) plaintiff's former attorneys are "thugs" who were wrong not to oppose Chase's motion for relief of default when Chase sought such relief at the outset of the case; (3) the trial court "orchestrat[ed]" the dismissal "from the very beginning" by not adequately supervising plaintiff's former counsel and by allowing that counsel to withdraw from representing him; (4) plaintiff did not

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3 Three of plaintiff's pending requests for judicial notice seem to contain a copy of what plaintiff would have filed in opposition to Chase's motion to compel. We decline to consider this document, which was never filed below and was presented to this Court for the first time after Chase filed its respondent's brief on appeal.

properly attach a proof of service to the summons that accompanied his complaint; (5) the trial court erred in granting summary judgment for Chase (although the court never did); and (6) anyone who disagrees with plaintiff's position is the "Anti-Christ." We also deny all four of plaintiff's pending requests for judicial notice as irrelevant.

DISPOSITION

The order and judgment are affirmed. Chase is entitled to its costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
MANELLA

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* Justice of the Court of Appeal, Second Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.