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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

NINO GEVORKOVA,

Plaintiff and Appellant,

v.

CARRINGTON MORTGAGE SERVICES,
LLC et al.,

Defendants and Respondents.

B287911

(Los Angeles County
Super. Ct. No. BC678068)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Susan Bryant-Deason, Judge. Affirmed.

Nino Gevorkova, in pro. per., for Plaintiff and Appellant.

Wright, Finlay & Zak, T. Robert Finlay, Jonathan D. Fink,
and Charles C. McKenna for Defendants and Respondents.

Plaintiff and appellant Nino Gevorgova (plaintiff) appeals from the judgment entered in favor of defendants and respondents Carrington Mortgage Services, LLC and Deutsche Bank National Trust Company, as indentured trustee for New Century Home Equity Loan Trust, Series 2006-1 (collectively, defendants) after the trial court sustained, without leave to amend, defendants' demurrer to plaintiff's complaint. We affirm the judgment.

BACKGROUND

The loan, plaintiff's default, and plaintiff's previous lawsuit

On or about December 15, 2005, plaintiff obtained a \$565,000 loan from New Century Mortgage Corporation (the loan), secured by a deed of trust (deed of trust) on certain real property located at 628 North Sixth Street in Montebello, California (the property).

Plaintiff defaulted on the loan, and a notice of default was recorded against the property on August 28, 2007. When plaintiff failed to cure the default, a notice of trustee's sale was recorded on June 1, 2009. Plaintiff was offered a loan modification through the Home Affordable Modification Program in early 2010, which resulted in rescission of the notice of default. Plaintiff then defaulted on the modified loan, and a new notice of default was recorded on October 2, 2017.

Plaintiff filed a lawsuit against defendants on August 29, 2013, in Los Angeles County Superior Court case No. BC519859 (the prior action). Plaintiff's first amended complaint, the operative pleading in that action, asserted two causes of action for (1) temporary restraining order and for preliminary and permanent injunction precluding foreclosure sale, and (2) violation of Business and Professions Code section 17200. Defendants filed a demurrer to the first amended complaint, and

on April 15, 2014, the demurrer was sustained without leave to amend. Judgment was entered in defendants' favor on May 5, 2014. Division One of this court affirmed the judgment on July 13, 2017.

The current lawsuit

Plaintiff filed this action against defendants on October 6, 2017. The complaint filed in this action is identical to the first amended complaint in the prior action. Defendants filed a demurrer, supported by a request for judicial notice of various documents, including the pleadings in the prior action. The trial court sustained the demurrer, without leave to amend, on January 11, 2018. Judgment was entered in defendants' favor on February 5, 2018. This appeal followed.¹

DISCUSSION

I. Standard of review

“On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. We give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]” (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) “When a demurrer is sustained, we determine whether the complaint states facts sufficient to state 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. [Citation.]” (*Ibid.*) The legal sufficiency of the complaint is reviewed de novo. (*Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784, 790.)

¹ Plaintiff's notice of appeal, filed on January 31, 2018, before entry of judgment, is valid and is treated as filed immediately after entry of the judgment. (Cal. Rules of Court, rule 8.822(c).)

The instant case involves applicability of the doctrine of res judicata, a legal issue also subject to de novo review. (*Jenkins v. County of Riverside* (2006) 138 Cal.App.4th 593, 618.)

II. Res judicata

The doctrine of res judicata has two aspects. The first, called claim preclusion, “prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 (*Mycogen*)). The second aspect of res judicata, called collateral estoppel or issue preclusion, “precludes relitigation of issues argued and decided in prior proceedings.’ [Citation.]” (*Ibid.*, fn. omitted.) Here, we are concerned with the claim preclusion aspect of res judicata.

Claim preclusion bars a plaintiff from bringing a second lawsuit on an identical cause of action that has already been litigated to judgment. (*Mycogen, supra*, 28 Cal.4th at p. 904.) Claim preclusion also “extends to all *legal theories, proofs, and demands for relief* that might have been presented in the first matter, provided both suits assert the *same cause of action*. [Citations.]” (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 541, fn. 21, italics omitted.)

The threshold elements for claim preclusion are: ““(1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]” [Citation.]” (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.)

III. Claim preclusion bars the instant lawsuit

It is undisputed that plaintiff and defendants were parties to the previous action and that the judgment entered in that

action was final and on the merits. The second and third prerequisite elements of claim preclusion are thus satisfied in this case.

The complaint filed in this lawsuit is identical to the first amended complaint filed in the previous action. The same two causes of action are asserted against the same defendants. The factual allegations are identical. The first prerequisite element of claim preclusion is also satisfied, and the complaint is therefore barred by the doctrine of res judicata. The trial court did not err by sustaining defendants' demurrer on that basis.

IV. Denial of leave to amend

Plaintiff fails to suggest how the complaint can be amended to correct the defects discussed above. The burden of proving a reasonable possibility of amending the complaint to state a cause of action "is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The trial court did not err by sustaining the demurrer without leave to amend.

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT