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

GUSTAVO SANCHEZ,

Plaintiff and Appellant,

v.

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP. et al.,

Defendants and
Respondents.

B272001

Los Angeles County
Super. Ct. No. BC565966

APPEAL from a judgment of the Superior Court of Los Angeles County, Rafael A. Ongkeko, Judge. Affirmed.

Brifman Law Corporation and Mark Brifman, for Plaintiff and Appellant.

Troutman Sanders and Meghan C. Sherill, for Defendants and Respondents.

INTRODUCTION

Plaintiff Gustavo Sanchez sued defendants Taylor, Bean & Whitaker Mortgage Corp. (Taylor) and RoundPoint Mortgage Servicing Corporation (RoundPoint) for violations of the Homeowner Bill of Rights (HBOR) (Civ. Code¹ § 2920.5 et seq.), claiming his property was sold at a trustee's sale while RoundPoint was still negotiating Sanchez's loan modification application. The trial court granted defendants' motion for summary judgment and entered judgment in their favor. Sanchez appeals, contending triable issues of fact exist as to whether he was provided with adequate notice that RoundPoint had denied his loan modification application and whether he suffered damages. We affirm.

FACTS AND PROCEDURAL BACKGROUND

1. The Foreclosure Proceedings

In May 2007, Taylor loaned Sanchez \$910,000, which was memorialized in an adjustable rate promissory note; the note was secured by a deed of trust against real property owned by Sanchez in Los Angeles (the Property). RoundPoint acted as Taylor's servicer of the loan.

Around 2010, Sanchez defaulted on the loan. Between December 2010 and May 2013, Sanchez and RoundPoint negotiated three loan modification agreements. Sanchez defaulted on each of those agreements.

On September 30, 2013, Quality Loan Service Corporation (Quality Loan) recorded a "Notice of Default and Election to Sell

¹ All undesignated statutory references are to the Civil Code.

Under Deed of Trust” against the Property. On March 21, 2014, Quality Loan recorded a “Notice of Trustee’s Sale,” stating that the Property would be sold at a public auction on April 17, 2014.

In March 2014, Sanchez sent RoundPoint a form authorizing the company to communicate directly with Sanchez’s attorney regarding matters related to the loan. Later that month, Sanchez’s attorney sent RoundPoint a loan modification application, which RoundPoint denied. Sanchez’s attorney submitted a second loan modification application in early May 2014, which RoundPoint denied two weeks later.

On May 25, 2014, Sanchez executed a grant deed conveying a 5 percent interest in the Property to Edelmira Quiles. On May 29, 2014, Quiles filed a bankruptcy petition in the United States Bankruptcy Court for the Central District of California. On June 2, 2014, RoundPoint received a request to stop the sale of the Property scheduled for that same day, citing Quiles’s pending bankruptcy case. RoundPoint postponed the sale until July 2, 2014. On June 17, 2014, the bankruptcy court dismissed Quiles’s case.

In June 2014, Sanchez submitted a third loan modification application, causing RoundPoint to again postpone the sale of the Property. RoundPoint denied Sanchez’s application in July 2014.

On July 11, 2014, Sanchez executed another grant deed, which conveyed a 5 percent interest in the Property to Arnulfo Rodriguez. On July 14, 2014, Rodriguez filed a bankruptcy petition in the Central District. A week later, RoundPoint received a request to stop the sale of the Property based on Rodriguez’s bankruptcy case. RoundPoint postponed the sale of the Property four times while Rodriguez’s bankruptcy case was pending.

On September 11, 2014, Sanchez submitted a fourth loan modification application to RoundPoint. On September 22, 2014, RoundPoint notified Sanchez that the sale of the Property had been postponed until October 22, 2014. On October 8, 2014, RoundPoint sent Sanchez's attorney a letter stating that Sanchez's application was incomplete and that Sanchez needed to submit a hardship letter and pay stubs for the period between August 1 and August 15, 2014.

On October 22, 2014, the bankruptcy court granted Taylor's motion to lift the automatic stay in Rodriguez's case, allowing Taylor to foreclose upon and obtain possession of the Property from Sanchez. The court found Sanchez's transfer of the Property to Rodriguez was "part of a scheme to delay or hinder [Taylor's] remedies against the property." After the court granted Taylor's motion, RoundPoint notified Sanchez that the foreclosure sale had been postponed until November 21, 2014.

On November 13, 2014, RoundPoint completed its evaluation of Sanchez's fourth loan modification application. On November 14, 2014, RoundPoint emailed an "Evaluation Notice" to the paralegal at Sanchez's attorney's firm, which stated that Sanchez was ineligible for a loan modification. That same day, the paralegal emailed RoundPoint seeking clarification of the Evaluation Notice and asking whether RoundPoint had received documents the firm had faxed to the company on November 13, 2014. On November 20, 2014, Sanchez's attorney sent RoundPoint a letter acknowledging that he had received the Evaluation Notice.

On November 21, 2014, the Property was sold at a trustee's sale. The "Trustee's Deed Upon Sale" transferring title to the Property to the buyer was recorded on December 3, 2014.

2. The Lawsuit and Summary Judgment Motion

In December 2014, Sanchez filed this lawsuit. The operative complaint, filed in May 2015, asserted a single cause of action for wrongful foreclosure against Taylor, RoundPoint, and two other defendants, Quality Loan and RRCI, Inc. Sanchez claimed defendants violated the prohibitions against “dual tracking” in the HBOR. Specifically, Sanchez alleged defendants violated former sections 2923.6 and 2924.18² because the Property was sold at a trustee’s sale while RoundPoint and Sanchez were still negotiating Sanchez’s fourth loan modification application. Sanchez sought to recover compensatory, statutory, and punitive damages from the defendants.

In December 2015, Taylor and RoundPoint filed a joint motion for summary judgment. They argued they were not subject to former section 2923.6 because they qualified as low-volume lenders and servicers—i.e., neither company had conducted more than 175 residential foreclosures in the reporting period during which RoundPoint was reviewing Sanchez’s fourth loan modification and when the Property was sold at the trustee’s sale.³ (See former §§ 2923.6, subd. (i); § 2924.18, subd. (b).) Instead, they claimed they were subject to former section

² Both statutes were in effect during the periods relevant to this appeal. They expired on December 31, 2017. (See Stats. 2012, c. 86 , § 7 [former § 2923.6]; Stats. 2012, c. 86 , § 21 [former § 2924.18].)

³ Taylor presented evidence that it conducted only 14 residential foreclosures in California during the relevant reporting period, and RoundPoint presented evidence that it conducted only 71 residential foreclosures in California during that period.

2924.18, which required only that a mortgage servicer provide written notice that a borrower's loan modification application has been denied before conducting a trustee's sale; the statute did not include any provision requiring a servicer to wait a specific period of time before conducting a trustee's sale once it provided the borrower written notice of denial. Since RoundPoint provided Sanchez written notice that his fourth loan modification application had been denied before the Property was sold through foreclosure, the companies argued the sale of the Property complied with former section 2924.18. Taylor and RoundPoint also argued Sanchez failed to show he was entitled to recover any damages because he admitted during his deposition that he suffered no economic or noneconomic harm as a result of the Property's sale.

Sanchez opposed the motion. Sanchez's attorney submitted a declaration in which he claimed that, prior to November 20, 2014, his firm had not received notification that Sanchez's fourth loan modification application had been denied.⁴ Sanchez did not submit any other evidence in opposition to the motion.

The court granted RoundPoint and Taylor's motion for summary judgment. The court found the sale was governed by former section 2924.18, and not former section 2923.6, because RoundPoint and Taylor qualified as low-volume lenders and

⁴ The trial court sustained defendants' objections to two statements in the attorney's declaration: (1) that the attorney's paralegal "was informed that [the sale of the Property] was not being postponed and that a denial letter had been sent to [Sanchez]"; and (2) that "the [denial] letter was not received by [Sanchez]." The court overruled the remainder of defendants' objections. Sanchez does not challenge the court's evidentiary rulings on appeal.

servicers. And they complied with former section 2924.18 because, before selling the Property, they notified Sanchez in writing that his fourth loan modification application had been denied. The court also found Sanchez presented no evidence that he suffered any damages from the sale of the Property.

The court entered judgment in RoundPoint's and Taylor's favor. Sanchez timely appeals from the judgment.

DISCUSSION

Sanchez contends the court erred in granting summary judgment because there are disputed issues of fact as to whether RoundPoint and Taylor violated the HBOR's prohibitions against dual tracking and whether he suffered damages as a result of those violations. As we explain below, Sanchez has forfeited all of his claims of error.

The judgment of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) As a consequence of this presumption of correctness, error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, an appellant must demonstrate prejudicial or reversible error based on sufficient legal argument supported by citation to an adequate record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557.) Matters not properly raised or that are lacking in adequate legal discussion will be deemed forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.)

To meet his burden on appeal from a grant of summary judgment, Sanchez, as the appellant, must “direct the court to evidence that supports his arguments.” (*Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 10.)

“Moreover, an appellant is required to not only cite to valid legal authority, but also explain how it applies in his case. [Citation.] It is not the court’s duty to attempt to resurrect an appellant’s case or comb through the record for evidentiary items to create a disputed issue of material fact. [Citation.]” (*Ibid.*) An appellant who fails to pinpoint evidence in the record indicating the existence of triable issues of fact will be deemed to have waived any claim that the lower court erred in granting summary judgment. (See *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115–1116.)

Sanchez has not met his burden on appeal. His eight-page opening brief, excluding the tables of contents and authorities, does not state the nature of the action or the relief sought in the trial court.⁵ And the statement of facts spans a little more than one page and addresses only the events occurring between September 2014, when Sanchez filed his fourth loan modification application, and November 21, 2014, when the Property was sold at a trustee’s sale.

In addition, Sanchez’s brief does not include accurate and specific record citations that support his factual assertions. (Cal. Rules of Court, rule 8.204(a)1)(C).) Instead, he supports every factual assertion with: (1) a citation to the number of the disputed or undisputed fact included in his “Statement of Disputed and Undisputed Facts” that he claims supports his assertion (e.g., “SOF #37”), without providing page numbers to the supporting evidence in the record; or (2) no citation at all. For instance, Sanchez claims “defendants did not inform [Sanchez’s attorney’s paralegal] that there had been a determination”

⁵ Sanchez did not file a reply brief.

concerning Sanchez's application and that RoundPoint did not send Sanchez's attorney a denial letter until November 20, 2014, the day before the Property was sold. Sanchez provides no citation to the record to support either of these factual assertions.

To be sure, Sanchez provides one accurate record citation in his statement of facts when he quotes the court's finding that RoundPoint had deemed Sanchez's fourth loan modification application complete as of November 13, 2014. But he does not cite to any part of the record containing evidence that supports or negates that finding.

Most significantly, Sanchez fails to adequately develop any of his legal arguments. In his entire brief, Sanchez cites only one case, *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, and he does so only to state the appellate standard of review. He does not cite any case law to support his challenges to the court's findings that RoundPoint and Taylor did not violate the prohibitions against dual tracking set forth in the HBOR and that Sanchez did not suffer any damages from the sale of the Property.

Instead, Sanchez insists we should interpret former section 2924.18 to require mortgage servicers to wait at least 21 days after providing a borrower written notice that his loan modification application has been denied before conducting a trustee's sale, even though the statute does not include any waiting period provision. (See generally former § 2924.18.)⁶

⁶ Sanchez also confuses former section 2924.18 with former section 2923.6 throughout his opening brief. For example, he states, "Cal Civ Code § 2924.18 requires the borrower be given 30 days . . . to contest the determination. [¶] There is not a similar requirement in Cal Civ. Code § 2923.6" As noted, former section 2924.18 does not

Although Sanchez’s contention raises an issue of statutory interpretation, he does not discuss any of the legal principles governing the interpretation of statutes, much less cite any authority that discuss those principles. For example, without any legal support, Sanchez asserts we should read a 21-day waiting period into section 2924.18 because “[w]hen no time is specified for an act, a reasonable time is presumed.” This argument is completely inadequate. (See *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700 [issues that are not supported by pertinent or cognizable legal argument may be deemed abandoned]; *Howard v. American National Fire Ins. Co.* (2010) 187 Cal.App.4th 498, 523 [“Conclusory assertions of error are ineffective in raising issues on appeal.”].)

In sum, by failing to provide us with a summary of the significant facts, failing to support his factual assertions with specific citations to the record, and failing to adequately develop any of the legal arguments raised in his brief, Sanchez has forfeited any claim that the court erred in granting defendants’ motion for summary judgment.

include any waiting period provision, while former section 2923.6 includes a provision requiring mortgage servicers to wait a specified period of time (the length of which is not 30 days but instead depends on various factors Sanchez fails to discuss) before conducting a trustee’s sale once written notice of a denial of a loan modification application has been provided to a borrower. (See former § 2923.6, subd. (e).)

DISPOSITION

The judgment is affirmed. Taylor and RoundPoint shall recover their costs on appeal.

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LAVIN, Acting P.J.

WE CONCUR:

EGERTON, J.

KALRA, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.