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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JOHNTAI JACKSON, Plaintiff and Appellant, v. JPMORGAN CHASE BANK et al., Defendants and Respondents.	B235352 (Los Angeles County Super. Ct. No. BC419339)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael C. Solner, Judge. Affirmed.

Johntai Jackson, in pro. per., for Plaintiff and Appellant.

AlvaradoSmith, Theodore E. Bacon and Nanette B. Barragan for Defendants and Respondents.

* * * * * *

Plaintiff and appellant Johntai Jackson, appearing in propria persona, appeals from a judgment entered following the trial court's granting a motion for judgment on the pleadings filed by defendants and respondents JPMorgan Chase Bank, N.A. and Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Trust 2006-1 (the Banks). We affirm. The trial court properly exercised its discretion to shorten the time for hearing on the motion and set the hearing within the applicable statutory time frame. (See Code Civ. Proc., §§ 438, subd. (e) & 1005, subd. (b).)[1] It also properly exercised its discretion to decline to order an additional continuance of the motion.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2002, appellant acquired the property located at 1343 Oak Hill Place in South Pasadena (property) and obtained a loan in the amount of $403,750 from Ameriquest Mortgage Company that was secured by a deed of trust on the property. The same assessor's parcel number (APN 5312-019-030) also identified the property located at 6118 Oak Hill Avenue in Los Angeles. Thereafter separate grant deeds purportedly executed by appellant in early 2003 transferred the property to the Julie Lee English Revocable Living Trust in one instance and to Arthur H. Jackson, Sr., and Sarah Vann in another.[2] Thereafter, in 2005 Jackson and Vann executed a grant deed transferring the property to Paula Van Brown. In turn, Brown executed a deed of trust on the property to secure a $735,250 loan, which was recorded in December 2005. After Brown defaulted on the loan, the Banks' predecessor commenced foreclosure proceedings and the property was sold at a trustee's sale in January 2007.

According to appellant, a former caretaker used his personal information, as well as personal information about Brown, to fraudulently execute a conveyance and obtain a

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[1] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

[2] At various points during the proceedings, appellant offered a death certificate of his father, Arthur H. Jackson, showing that he died in 1974.

loan against the property without his knowledge. Appellant contended that he had paid off all loans against the property by 2005.

In August 2009, appellant in propria persona filed a complaint against the Banks, Vann and Brown, alleging causes of action for improper foreclosure, quiet title, fraud, malicious conduct, breach of good faith and fair dealing, cancellation of trustee's deed and declaratory relief. The trial court sustained the Banks' demurrer to the complaint with leave to amend in part and overruled it in part. In February 2010, appellant filed a first amended complaint, and the Banks again demurred. The trial court sustained the demurrer with 30 days' leave to amend.

After the trial court denied the Banks' motion to dismiss for appellant's failure to file a timely amended complaint, appellant filed the operative second amended complaint, which alleged claims against the Banks for improper foreclosure, quiet title, malicious conduct, forgery, cancellation of trustee's deed upon sale and declaratory relief. The Banks answered, generally denying the allegations and asserting several affirmative defenses.

Trial was set for May 24, 2011. On April 8, 2011, the Banks filed a motion for judgment on the pleadings and received a June 29, 2011 hearing date. Consequently, on April 13, 2011, the Banks filed an ex parte application to shorten time for hearing on the motion. Appellant opposed the application on the ground that he had been ill during February and March 2011. Following a hearing at which appellant appeared, the trial court advanced the trial date to June 28, 2011 and set May 16, 2011 as the date for the hearing on the motion for judgment on the pleadings.

On April 27, 2011, appellant filed an ex parte application seeking to set aside the trial court's previous order. Following a hearing the same day at which appellant again appeared, the trial court continued the hearing on the motion for judgment on the pleadings to May 24, 2011, giving appellant until May 10, 2011 to file an opposition. Appellant did not file opposition papers, nor did he appear on May 24, 2011. The trial court indicated that on the previous day appellant had telephoned the clerk to say that he was ill. It noted that while appellant could have filed written opposition, it did not know

what appellant could have done to persuade it that the motion was not well-taken. The trial court observed that the motion established appellant was not the owner of record at the time of the foreclosure and his claims were time-barred in any event. Accordingly, it granted the motion without any further leave to amend. A judgment of dismissal was entered in June 2011.

Appearing through counsel after the judgment had been entered, appellant sought reconsideration of the order granting the motion for judgment on the pleadings; he contended that his illness rendered him unable to litigate the matter effectively. Following a July 26, 2011 hearing, the trial court denied the motion. Appellant appealed from the judgment.

DISCUSSION

Appellant contends that the judgment should be reversed because the order shortening time reduced the notice period for the judgment on the pleadings motion below the statutory minimum and because he should have received an additional continuance when he did not appear for the hearing on the motion. We find no merit to his contentions.[3]

Appellant received 46 days' notice of the hearing on the motion for judgment on the pleadings, calculated from the April 8, 2011 filing and service date of the motion to the May 24, 2011 hearing date set as a result of the order shortening time. Appellant claims that the order shortening time violated section 437c, subd. (a), which provides in part that "[n]otice of the motion and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing." But section 437c is

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[3] We likewise find no merit to the Banks' contention that appellant's challenge to the order shortening time is an appeal from a nonappealable order. (§ 906 [on an appeal from a judgment, "the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party"]; *Jennings v. Marralle* (1994) 8 Cal.4th 121, 128 [pretrial orders affecting substantial rights can be raised in appeal from final judgment].)

directed to motions for summary judgment—not motions for judgment on the pleadings. Construing section 437c, the court in *McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 118 held that "in light of the express statutory language, trial courts do not have authority to shorten the minimum notice period for summary judgment hearings." (Accord, *Urshan v. Musicians' Credit Union* (2004) 120 Cal.App.4th 758, 763–765 [describing Legislature's use of mandatory language to deprive a trial court of authority to shorten the notice period for summary judgment motion hearings].) The *McMahon* court described what it believed was the Legislative intent behind the statutory language: "Because it is potentially case dispositive and usually requires considerable time and effort to prepare, a summary judgment motion is perhaps the most important pretrial motion in a civil case. Therefore, the Legislature was entitled to conclude that parties should be afforded a minimum notice period for the hearing of summary judgment motions so that they have sufficient time to assemble the relevant evidence and prepare an adequate opposition." (*McMahon v. Superior Court, supra,* at pp. 117–118.)

In contrast to a motion for summary judgment, a motion for "[j]udgment on the pleadings is akin to a demurrer and is properly granted only if the complaint does not state facts sufficient to state a cause of action against that defendant. [Citations.] The grounds for the motion must appear on the face of the complaint, and in any matters subject to judicial notice. [Citation.]" (*Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254.) The presentation of extrinsic evidence is generally neither required nor proper on a motion for judgment on the pleadings. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.)

Section 438 governs motions for judgment on the pleadings. Given that opposition to such a motion does not require the marshalling and assembly of evidence, the statute does not specify a minimum notice period. Rather, in terms of timing it provides only that "[n]o motion may be made pursuant to this section if a pretrial conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits." (§ 438, subd. (e).) This provision affords the trial court with discretion to control the

time frame for hearing a motion for judgment on the pleadings. (*Sutherland v. City of Fort Bragg* (2000) 86 Cal.App.4th 13, 25, fn. 4; see also *Stoops v. Abbassi* (2002) 100 Cal.App.4th 644, 650 ["'A motion for judgment on the pleadings may be made at any time either prior to the trial or at the trial itself'"]; *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 877 [same].) Thus, contrary to appellant's argument, the trial court had complete discretion to order that the motion here be heard 46 days after it had been filed.

The hearing date likewise comported with the notice provisions set forth in section 1005, subdivision (b), which provide in relevant part: "Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. . . . However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California . . . ." (See also § 1005, subd. (a)(13) [subdivision (b) notice requirements apply to "[a]ny other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge"].) Appellant received 46 days' notice, a period far exceeding the minimum 21 days required by statute.

We likewise reject appellant's argument that the trial court abused its discretion by denying a further continuance of the hearing on the motion when he failed to appear on May 24, 2011. A party does not have a right to a continuance as a matter of law. (*Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170.) Continuances are disfavored, and the trial court may grant a continuance "only on an affirmative showing of good cause requiring the continuance." (Cal. Rules of Court, rule 3.1332(c) [governing trial continuances].) "Reviewing courts must uphold a trial court's choice not to grant a continuance unless the court has abused its discretion in so doing." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 823.) The party whose request for a continuance was denied bears the burden of showing the trial court abused its discretion. (*Mahoney v. Southland Mental Health Associates Medical Group, supra,* at p. 170.)

Appellant failed to meet his burden. He claimed that a series of related hospitalizations and illnesses precluded him from dealing with the ex parte matters that were heard on April 13 and 27, as well as the motion on May 24, 2011. But he personally appeared at both of the April hearings where the trial court initially shortened the time for hearing on the motion for judgment on the pleadings and later extended that hearing date and appellant's time to respond. He did not explain why he was unable to file written opposition to the motion by the extended May 10, 2011 due date. Nor did he fully explain why he was unable to attend the May 24, 2011 hearing. According to the trial court: "We did get a call from Mr. Jackson. He seems to like to call my clerk every day. He indicated he's having some further medical problems, but that seems to be the course of events for him." After expressing sympathy for appellant, the trial court continued: "I'm not sure whether he said he's back in the hospital or whether he's just ill and having problems. Again, notwithstanding that, I don't know what he could have done, what he could have filed with the court in opposition to the motion to persuade me that he's right and the defendants are wrong."

"[T]he mere absence of a party standing alone is insufficient to compel a court to grant a continuance." (*Young v. Redman* (1976) 55 Cal.App.3d 827, 831.) Indeed, absent a showing of good cause, a trial court properly exercises its discretion to deny a continuance even though a party is ill and unable to attend a hearing. (*Ibid*.; see also § 594, subd. (a) ["In superior courts either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with the case and take a dismissal of the action, or a verdict, or judgment," assuming the absent party had proper notice].) The cases cited by appellant highlight the type of good cause which may support the grant of a continuance. (See *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 713, 716 [good cause for continuance of summary judgment motion where the plaintiff's attorney averred that he had been hospitalized for emergency surgery and for that reason had not seen moving papers until 10 days after they were filed and served]; *Hernandez v. Superior Court* (2004) 115 Cal.App.4th 1242, 1246–1248 [good cause for continuance of trial date where

the plaintiff's counsel died after the initial trial date, the record showed his illness had negatively affected his trial preparation and the plaintiff was diligent in obtaining a new attorney and seeking a continuance].)

Here, we cannot conclude that the trial court abused its discretion in finding no good cause for a continuance. Balanced against appellant's vague claims of disabling illnesses, the action had been pending for over two years and appellant had twice received leave to amend; he had approximately one and one-half months' notice of the motion; he received one continuance of the motion because of illness; and he offered no written opposition to a motion directed solely toward the viability of the pleadings. Under these circumstances, we find no basis to disturb the trial court's exercise of discretion to rule on the motion and grant judgment on the pleadings.

DISPOSITION

The judgment is affirmed. Parties to bear their own costs.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST