Filed 10/3/19 Alvarez v. Wells Fargo Bank, N.A. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARTHA ALVAREZ, Plaintiff and Appellant, v. WELLS FARGO BANK, N.A. et al., Defendants and Respondents.	B293237 (Los Angeles County Super. Ct. No. BC694935)

APPEAL from a judgment of the Los Angeles Superior Court, Elizabeth R. Feffer, J. Affirmed.

Martha Alvarez, in pro. per.; and Ralph E. Harrison II Law Offices and Ralph E. Harrison II for Plaintiff and Appellant.

Anglin Flewelling Rasmussen Campbell & Trytten, Robert Collings Little, for Defendants and Respondents.

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A homeowner filed this lawsuit challenging a bank's foreclosure of her home. The trial court sustained a demurrer to the lawsuit because it was indistinguishable from an earlier lawsuit the homeowner had filed in, and which was dismissed by, a federal court. The court's dismissal was proper, so we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *Loan, default and foreclosure*

In late 2007 and early 2008, Martha Alvarez (plaintiff) borrowed $860,000 from the predecessor-in-interest to Wells Fargo Bank, N.A. (Wells Fargo). The loan was secured by a deed of trust on a residence plaintiff owned in Walnut, California.

By July 2016, plaintiff was in default and owed $1,498,368.12 on the loan. On July 7, 2016, Wells Fargo held a foreclosure sale and purchased the home for $1,029,735.93, suffering a loss of $468,632.19.

On the morning of the foreclosure sale, plaintiff's husband filed a bankruptcy petition.

B. *Plaintiff's 2016 federal case*

Later in 2016, plaintiff and her husband filed suit against Wells Fargo and others in federal court (the 2016 federal case). (*Alvarez v. Wells Fargo Bank, N.A.* (C.D. Cal. 2017) 2017 U.S. Dist. LEXIS 221847 (*Alvarez I*).)[1] She sought to set aside the foreclosure for several reasons, including that (1) the foreclosure sale violated the automatic stay triggered by her husband's bankruptcy petition, and (2) Wells Fargo violated California's

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1 We may take judicial notice of the "[o]fficial acts of the . . . judicial departments of the United States . . ." (Evid. Code, § 452, subd. (c).)

Homeowner's Bill of Rights (Civ. Code, § 2923.6). (*Alvarez I*, at p. *1.) In August 2017, the district court granted Wells Fargo's motion to dismiss the complaint for failure to state a claim. (*Id.* at pp. *2-4, 6.) Neither plaintiff nor her husband appealed.

II. Procedural Background

In February 2018, plaintiff again sued Wells Fargo[2] to set aside the trustee's sale, to cancel the deed of trust that issued upon the sale, and to quiet title on the grounds that (1) the foreclosure sale violated the automatic stay attendant to her husband's bankruptcy petition, and (2) Wells Fargo violated the Homeowner's Bill of Rights.

Wells Fargo demurred on several grounds, including that these claims were duplicative of the claims finally adjudicated in the 2016 federal case and hence barred by res judicata. After a round of briefing, the trial court sustained the demurrer without leave to amend.

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

DISCUSSION

Plaintiff argues that the trial court erred in sustaining the demurrer to her lawsuit without leave to amend. "In reviewing a trial court's order sustaining a demurrer without leave to amend, we must ask (1) whether the demurrer was properly sustained, and (2) whether leave to amend was properly denied." (*Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1335.) The first question requires us to "independently evaluate whether the

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2 Plaintiff sued three other parties, but has not pursued an appeal against them. Accordingly, we will not discuss them further.

operative complaint states facts sufficient to state a cause of action" (*Alborzian v. JPMorgan Chase Bank, N.A.* (2015) 235 Cal.App.4th 29, 34), and in so doing we accept as true "all material facts properly pled" in that complaint and any materials properly "subject to judicial notice," with any inconsistencies between the two resolved in favor of judicially noticed facts (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 152; *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20). The second question "requires us to decide whether ""there is a reasonable possibility that the defect [in the operative complaint] can be cured by amendment."""" (*McClain v. Sav-On Drugs* (2017) 9 Cal.App.5th 684, 695, aff'd, 6 Cal.5th 951.)

I. Was the Demurrer Properly Sustained?

A trial court may properly sustain a demurrer to a claim if the claim is barred by res judicata. (*Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 225; *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 324.) A claim is barred by res judicata if it "involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in [a prior law]suit." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) Because the 2016 federal case (1) sought to invalidate the July 2016 foreclosure due to the automatic bankruptcy stay and alleged violations of the Homeowner's Bill of Rights, (2) was brought by plaintiff against Wells Fargo, and (3) resulted in a dismissal for failure to state a claim (*Federated Dep't Stores v. Moitie* (1981) 452 U.S. 394, 399, fn. 3 ["The dismissal for failure to state a claim . . . is a 'judgment on the merits.'"]), res judicata bars plaintiff's attempt to relitigate the same claim in *this* lawsuit between the same parties. (Accord, *Wassmann v. South Orange County Community College*

Dist. (2018) 24 Cal.App.5th 825, 844 ["res judicata . . . [precludes] relitigation of the same cause of action in a second suit between the same parties."].)

Plaintiff does not dispute that the prerequisites to res judicata apply to her claims, but offers five reasons why the trial court nevertheless erred in dismissing those claims. She argues that there was no final judgment in Case No. BC694935, but the res judicata bar arises from the 2016 federal case—not whatever other lawsuit she filed against Wells Fargo in Case No. BC694935. She argues that her case is analogous to *Espinosa v. United Student Aid Funds* (9th Cir. 2008) 553 F.3d 1193 (*Espinosa*). *Espinosa* declined to apply res judicata where the plaintiff sought to reopen an earlier action to enforce its judgment in that action. (*Id.* at pp. 1197, 1200.) *Espinosa* found that the prerequisites for res judicata were lacking; here, as explained above, they are not. Plaintiff next argues that the bankruptcy court was wrong to retroactively annul the automatic stay that might have otherwise precluded the foreclosure sale. This argument impermissibly seeks to relitigate two final judgments—namely, (1) the judgment in the 2016 federal case finding the foreclosure sale to be valid notwithstanding plaintiff's attempt to invoke the automatic stay, and (2) the judgment in the bankruptcy action itself, including the ruling of the federal district court affirming the bankruptcy court's retroactive annulment of the stay (see *In re Alvarez* (C.D. Cal. 2018) 2018 U.S. Dist. LEXIS 179435, *5-6). And even if we were to ignore the res judicata bar that precludes such relitigation, plaintiff's argument runs up against a solid wall of precedent recognizing the power of the bankruptcy court to retroactively annul the automatic stay when the equities so require, such as when a

bankruptcy petition is filed in bad faith in order to forestall a foreclosure sale. (*National Envtl. Waste Corp. v. City of Riverside* (*In re National Envtl. Waste Corp.*) (9th Cir. 1997) 129 F.3d 1052, 1054-1055; *In re Shamblin* (9th Cir. 1989) 890 F.2d 123, 126; see also *Easley v. Pettibone Mich. Corp.* (6th Cir. 1993) 990 F.2d 905, 909-910; *Barnes v. Barnes* (*In re Barnes*) (5th Cir. 2008) 279 Fed.Appx. 318, 319; *In re Myers* (3d Cir. 2007) 491 F.3d 120, 129.) Plaintiff next argues that she was denied "any opportunity . . . to argue her case." This argument is unsupported by the record, which shows that plaintiff filed a written opposition to Wells Fargo's demurrer, that the trial court issued a tentative ruling, and that the court subsequently issued a final ruling. Plaintiff finally argues, for the first time at oral argument, that res judicata cannot attach to the 2016 federal case because she was self-represented in that case, but "[t]he doctrine of res judicata is equally applicable to pro se plaintiffs." (*Iwachiw v. N.Y. City Bd. of Educ.* (E.D.N.Y. 2002) 194 F.Supp.2d 194, 202, italics omitted; see also, *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [self-represented litigants are "'treated like any other party and [are] entitled to the same, but no greater consideration than other litigants and attorneys.' [Citation.]"].)

II. Did the Trial Court Properly Deny Leave to Amend?

In assessing whether a trial court erred in denying leave to amend a complaint, it is the plaintiff's burden to "show in what manner [s]he can amend [her] complaint and how that amendment will change the legal effect of [her] pleading." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) Plaintiff has proffered *no* explanation on appeal as to how she can plead around res judicata, and we independently see no way for her to

do so. Consequently, the trial court's dismissal without prejudice was appropriate.

DISPOSITION

The judgment of dismissal is affirmed. Wells Fargo is entitled to its costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P.J.
ASHMANN-GERST

_____, J.*
RUBIN

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