

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CRAIG HUXLEY,

Plaintiff and Appellant,

v.

PHH MORTGAGE
CORPORATION et al.,

Defendants and Respondents.

B289391

(Los Angeles County
Super. Ct. No. BC564137)

APPEAL from an order of the Superior Court for Los Angeles
County, Rita Miller, Judge. Affirmed.

Craig Huxley, in pro. per., for Plaintiff and Appellant.

Ghidotti | Berger and Shannon C. Williams for Defendants and
Respondents PHH Mortgage Corporation and Wells Fargo Bank, N.A.

Plaintiff Craig Huxley appeals from an order denying his ex parte application to enforce a settlement agreement between himself, on the one hand, and defendants PHH Mortgage Corporation (PHH) and Wells Fargo Bank, N.A. (Wells), on the other hand. Huxley sought to enjoin defendants' pending sale of his home under a notice of sale recorded as part of a non-judicial foreclosure. The trial court denied the request for an injunction, finding that nothing in the settlement agreement precluded defendants from going forward with the sale. We affirm.

BACKGROUND

Huxley purchased a home in Sherman Oaks in 1978. In 1998, Huxley obtained a mortgage loan from PHH, secured by a deed of trust on the property. In January 2014, a "Notice of Default and Election to Sell Under Deed of Trust" (notice of default) was recorded on the property on behalf of PHH, stating that Huxley owed more than \$77,000 in past due payments on the mortgage.

In November 2014, Huxley filed a lawsuit against PHH, Wells, and NDEx West, LLC, the foreclosure trustee for PHH. The complaint alleged that defendants had disregarded California law in attempting to foreclose on his property. It alleged causes of action for violations of various provisions of the non-judicial foreclosure law, the Homeowner's Bill of Rights (Civ. Code, § 2923.6), and Senate Bill No. 900 (effective Jan. 1, 2013); fraud; the unfair competition law (Bus. & Prof. Code, § 17200, et seq.); and breach of contract/breach of duty of good faith and fair dealing; it also sought an injunction preventing the trustee's sale, and an accounting.

In June 2016, Huxley, PHH, and Wells entered into an agreement entitled “CONFIDENTIAL MUTUAL RELEASE AND SETTLEMENT AGREEMENT” (the Agreement), the agreement at issue in this appeal. After an opening paragraph identifying the parties, the Agreement states the following:

“RECITALS

“This Agreement is entered into with reference and incorporation of the following:

“A. In or around November 1998, Huxley obtained a Mortgage Loan (‘Loan’) from PHH. The Loan was in the principal amount of \$648,000.00.

“B. The Loan was secured by a Deed of Trust executed on or about October 29, 1998, and recorded on November 4, 1998, in the official records of Los Angeles County. . . .

“C. On or about November 20, 2014, Huxley filed an action in the California Superior Court, County of Los Angeles, styled *Craig Huxley v. PHH Mortgage Corporation, et al.*, Case No. BC564137 (hereinafter ‘the Action’).

“By this Mutual Release and Settlement Agreement (‘Agreement’), the Parties herein desire and intend to fully and completely release each other from any and all rights, duties, obligations or liabilities whether known or unknown, in the past, present or future which may arise or may have arisen from the allegations, circumstances, facts, or denials set forth in the Complaint and the allegations, circumstances, facts or denials that could have been set forth in any Answer or Cross-Complaint thereto (hereafter collectively referred to as the ‘Claims’).

“NOW, THEREFORE, in consideration of the mutual conditions, covenants and other obligations set forth herein, the receipt and

adequacy of which are hereby acknowledged, the Parties agree as follows:"

The first paragraph following the recitals states: "The recitals set forth above are hereby incorporated by this reference." The next paragraph sets out the consideration. It states that, in mutual consideration for entering into the Agreement, Huxley agrees to dismiss his complaint with prejudice. Huxley also agreed to provide PHH with a full and complete loan modification application by a certain date, at which point he would be entitled to the protection of all applicable provisions of the California Homeowner's Bill of Rights, which includes written notification of PHH's determination regarding the application and certain appeal rights if the application is denied. The Agreement also states that no notice of sale will be recorded until PHH complies with all provisions of the Homeowner's Bill of Rights, and that, in any event, no trustee's sale will occur before December 15, 2016. For its part, PHH agreed to consider in good faith Huxley's application, and agreed that neither the existence of the Action nor the claims asserted by him would be used in determining whether to approve or deny the application.

Paragraph 3 of the Agreement is a confidentiality provision.

Paragraph 4 is entitled "Release by Huxley." It states, in relevant part, "Except for the obligations and rights expressly set forth and reserved herein, in consideration of the recitals, covenants and agreements set forth in this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, upon the

Effective Date of this Agreement, Huxley, for and on behalf of his predecessors, principals, [etc.] . . . hereby unconditionally, irrevocably, forever and fully release[s], acquit[s], and forever discharge[s] PHH and [Wells] . . . of and from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind, nature, or amount whether in law or equity, whether known or unknown . . . which were or could have been raised in, arise out of, relate to, or in any way, directly or indirectly, involve the Property, the Action and this Agreement. It is the intention and effect of this release to discharge all claims that the Releasors have against the Releasees up until and including the date of the execution of this Agreement.”

There is no paragraph containing a release by PHH or Wells. Of the remaining provisions of the Agreement, the only ones relevant to this appeal are paragraphs 6, 8, and 17. Paragraph 6 provides that the Agreement is enforceable under Code of Civil Procedure 664.6.

Paragraph 8, entitled “Full and Final Settlement,” states: “It is the intention of the Parties that this Agreement shall be effective among them as the full and final accord and satisfaction and is a bar to all actions, causes of action, claims, obligations, costs, expenses, attorneys’ fees, damages, losses, liabilities and demands of whatever nature, character, kind or description relative to the claims as between the Parties herein only released herein, whether described in this Agreement or not.” Paragraph 17 states: “The Parties acknowledge that this Agreement, the Deed of Trust, and Note, contain the entire agreement among them and the terms contained herein are contractual

and not merely recital. No promise by any of the Parties which is not expressly contained in this Agreement, the Deed, or the Note shall be binding or valid. Any modification, alteration or amendment to this Agreement shall be void and of no force or effect unless it is in writing and signed by all Parties.”

It appears that, following the execution of the Agreement, Huxley submitted his loan modification application, and PHH denied it, complying with the terms of the Agreement. A notice of trustee’s sale was recorded on August 24, 2017. In the meantime, however, Huxley filed for bankruptcy under Chapter 7 on July 27, 2017. The order of discharge was filed by the bankruptcy court on November 6, 2017, and the case was closed on December 22, 2017.

A new notice of trustee’s sale was recorded on February 6, 2018, with a sale date of March 12, 2018. On March 2, 2018, Huxley filed the ex parte application at issue in this appeal. In the application, Huxley asserted that the trustee’s notice of sale was invalid because defendants failed to issue a valid notice of default, which is a prerequisite to a notice of sale. He argued defendants could not rely upon the notice of default that was recorded in January 2014 because under the 2016 Agreement, defendants “released any and all rights they otherwise might have with respect to their January 2014 Notice of Default.”

The trial court continued the hearing on the ex parte application to give the parties an opportunity to brief the issues. At the continued hearing, the court denied Huxley’s application. The court observed that although the Agreement states in the recitals that the parties desire and intend to fully and completely release each other from any and all

rights, duties, obligations, or liabilities, that intent is not reflected in the body of the agreement, because the release provision applied only to Huxley. The court also observed that there is nothing in the Agreement requiring the filing of a new notice of default. Therefore, the court concluded that the reasonable interpretation of the Agreement “is that the prior notice of default remained effective, and only a new notice of sale was required.” Huxley timely filed a notice of appeal from the court’s order denying his application.

DISCUSSION

Huxley makes two arguments on appeal. First, he argues, as he did in the trial court, that the Agreement constituted a mutual release of all claims, and therefore “any legal proceeding based on earlier documents or procedures is barred and of no effect following execution of the Agreement.” Second, he argues that “[a]ll relevant pre-existing claims and their attendant rights [other than rights regarding the deed of trust that are expressly provided under bankruptcy law] were discharged in Huxley’s bankruptcy.” Neither argument has merit.

A. *The Agreement Did Not Affect the Notice of Default*

Huxley argues that under the Agreement, both parties released all rights or liabilities that could have been alleged in the pleadings of the case, which Huxley contends include the foreclosure proceedings that PHH had begun. Thus, he argues that PHH must start the non-judicial foreclosure proceedings from the beginning, by filing a new notice of default in accordance with the statutory procedure. He relies upon two

provisions of the Agreement to support his assertion of a mutual release. First, he points to the recitals, which were specifically incorporated into the Agreement. As noted, that provision states: “By this Mutual Release and Settlement Agreement . . . , the Parties herein desire and intend to fully and completely release each other from any and all rights, duties, obligations or liabilities.” He also relies upon paragraph 8, which provides: “It is the intention of the Parties that this Agreement shall be effective among them as the full and final accord and satisfaction and is a bar to all actions, causes of action, claims, obligations, costs, expenses, attorneys’ fees, damages, losses, liabilities and demands of whatever nature, character, kind or description relative to the claims as between the Parties herein only released herein, whether described in this Agreement or not.”

As noted, the trial court found that despite these expressions of the parties’ purported intent, the *substance* of the Agreement did not include a mutual release of all claims, and therefore the only reasonable interpretation of the Agreement is that the release of all claims applied only to Huxley. We agree.

“The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. [Citations.] The mutual intention to which the courts give effect is determined by objective manifestations of the parties’ intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent acts and conduct of the parties.

[Citations.]” (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 473-474.)

In this case, the substance of Agreement is found in two paragraphs: paragraph 2, which sets out the consideration, and paragraph 4, which sets out the release. In essence, paragraph 2 provides that, in exchange for Huxley dismissing his lawsuit, PHH agrees to (1) allow Huxley to submit an application for loan modification; (2) provide Huxley with all rights and protections of the California Homeowner’s Bill of Rights; (3) fairly consider Huxley’s application; and (4) not record a notice of trustee’s sale before PHH’s final determination (including appeal, if taken) on the application, and in no event will a trustee’s sale occur before December 15, 2016. In paragraph 4, Huxley, and only Huxley, releases all claims arising from the dispute between the parties.

In light of these specific provisions setting out exactly what the parties agreed to, we conclude that general boilerplate language of the recitals and paragraph 8¹ cannot be interpreted to expand the scope of their agreement. Under the specific provisions of the Agreement, the only claim, right, obligation, or liability PHH released was its right to record a notice of trustee’s sale before the completion of the process for determining Huxley application for a loan modification, and its right to

¹ We note that paragraph 8 is somewhat ambiguous in any event, since it appears to bar all claims, obligations, etc. “relative to the claims as between the Parties herein *only released herein*.” (Italics added.) This seems to imply that the bar is only as to claims that were specifically released in the Agreement, which in this case means only Huxley’s claims against PHH and Wells.

hold a trustee's sale before December 15, 2016. Therefore, we hold that the Agreement had no affect on the notice of default that PHH had recorded in January 2014, and PHH could proceed directly to recording a notice of trustee's sale.

B. *The Bankruptcy Discharge Did Not Affect the Notice of Default*

Huxley argues that, although defendants were notified of his filing of bankruptcy, they did not “attempt to preserve any rights regarding their Deed of Trust on Huxley’s home other than those expressly provided by Bankruptcy law . . . and the resurrection of a pre-bankruptcy Notice of Default is not among those rights.” In other words, Huxley appears to argue that the filing of bankruptcy eliminated PHH’s notice of default, and defendants’ failure to preserve their rights under that notice of default resulted in it being discharged in bankruptcy. He is mistaken.

The filing of a bankruptcy petition by a debtor-homeowner against whom foreclosure procedures have begun does not invalidate the steps taken by the mortgage holder to foreclose; it merely stays the foreclosure proceeding. (See *Tully v. World Savings & Loan Assn.* (1997) 56 Cal.App.4th 654, 662-663.) Nor does a discharge in a Chapter 7 bankruptcy eliminate the mortgage holder’s right to continue foreclosure proceedings once the automatic stay protecting the bankruptcy estate is lifted. (*Johnson v. Home State Bank* (1991) 501 U.S. 78, 80.) Instead, the bankruptcy simply discharges the debtor from personal liability on the debt, and “a creditor’s right to foreclose on the mortgage survives or passes through the bankruptcy.” (*Id.* at p. 83.)

In short, the only effect of Huxley's bankruptcy was to stay the foreclosure procedures and (it appears) to discharge him from personal liability on the mortgage. Therefore, PHH was entitled to continue the foreclosure based upon its already-recorded notice of default.

DISPOSITION

The order denying the ex parte application is affirmed.
Defendants shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

COLLINS, J.

CURREY, J.