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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THRIS VAN TAYLOR,

Plaintiff and Appellant,

v.

ONE UNITED BANK et al.,

Defendants and Respondents.

B276194

(Los Angeles County
Super. Ct. No. BC535993)

APPEAL from a judgment of the Superior Court of Los Angeles County. Maureen Duffy-Lewis, Judge. Affirmed.

Thris Van Taylor, in pro. per., for Plaintiff and Appellant.

Aldridge Pite and Peter J. Salmon for Defendant and Respondent.

This appeal arises from plaintiff Thris Van Taylor’s challenge to the judicial foreclosure of his property. Respondent One United Bank (United) sued successfully for foreclosure in 2009, and the property was sold at a foreclosure sale later that year. Approximately five years later, in 2014, Van Taylor sued United for breach of contract arising from the foreclosure, and violation of his right to redeem the property. United successfully demurred to the complaint on the ground the action was time-barred. The court dismissed the action, and Van Taylor now appeals. He argues the action was timely. We conclude that some of Van Taylor’s claims were time-barred, and his complaint otherwise failed to state a cause of action. Therefore, the demurrer was properly sustained. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2009, United sued Van Taylor for judicial foreclosure of a deed of trust on Van Taylor’s property and a deficiency judgment.¹ Van Taylor did not file an answer, and the court entered his default.

In June 2009, the court entered a default judgment and, in October 2009, a sheriff’s sale occurred at which United bought

¹ “[F]oreclosure [] may be either judicial or nonjudicial. [Citation.] In a judicial foreclosure, if the property is sold for less than the amount of the outstanding indebtedness, the creditor may seek a deficiency judgment, or the difference between the amount of the indebtedness and the fair market value of the property, as determined by a court, at the time of the sale. [Citation.] However, the debtor has a statutory right of redemption, or an opportunity to regain ownership of the property by paying the foreclosure sale price, for a period of time after foreclosure. [Citation.]” (*National Enterprises, Inc. v. Woods* (2001) 94 Cal.App.4th 1217, 1225–1226.)

the property. Two months later, in December 2009, United moved for a determination of a deficiency. The following month, in January 2010, Van Taylor filed a motion to vacate the default judgment on the ground that the complaint pled and attached a different promissory note than the one related to the deed of trust foreclosed upon. The trial court denied the motion and granted United a deficiency of \$89,229.05.

Van Taylor appealed. While the case was on appeal, in September 2010, Van Taylor signed a document in the form of a settlement agreement stating that he would pay United \$478,300 in exchange for United's transfer of the property back to him. United did not sign the agreement. Five months later, in February 2011, United transferred the property to its vice-president, Yan Feng.

In January 2012, Division 3 of our court reversed the default judgment due to the inconsistency between United's complaint and the exhibits that United had attached. (See Code Civ. Proc., § 580; *Greenup v. Rodman* (1986) 42 Cal.3d 822, 826 [default judgment may not exceed amount pled in the complaint].) The appellate court remanded the case with directions to allow United leave to amend its complaint.² United did not amend the complaint and the action was dismissed in April 2012.

Almost two years later, in February 2014, Van Taylor filed the present action against United and several of its employees. The operative First Amended Complaint (FAC) alleged causes of action for "breach of written contract" and "violations of the right

² We take judicial notice of the opinion in *One United Bank v. Taylor* (Jan. 17, 2012, B225094 [nonpub. opn.].)

to redemption.”³ Both causes of action alleged that United had breached the deed of trust on Van Taylor’s property by wrongfully foreclosing on it. They also alleged that United breached the settlement agreement by transferring the subject property to Feng. The right of redemption cause of action alleged that United’s transfer of the property to Feng amounted to a refusal to allow Van Taylor to redeem the property.

Defendants filed a general demurrer. On January 29, 2016, the court sustained the demurrer on the ground that the entire complaint was time-barred. The court reasoned that the statute of limitations on each cause of action began to run when Van Taylor moved to vacate the default judgment in the first action. The court did not address Van Taylor’s claims regarding the subsequent breach of the settlement agreement, or United’s alleged refusal to allow him to exercise his right of redemption. Van Taylor timely appealed.

DISCUSSION

1. Standard of Review

“On appeal from an order dismissing a complaint after the sustaining of a demurrer, we review the pleading to determine whether the facts alleged state a cause of action under any possible legal theory. [Citation.] We give the complaint a reasonable interpretation, ‘treat[ing] the demurrer as admitting all material facts properly pleaded,’ but do not ‘assume the truth of contentions, deductions or conclusions of law.’ [Citation.] We

³ The FAC alleged additional causes of action that Taylor does not discuss in his appeal. We, therefore, also do not discuss them. (See *Huntington Landmark Adult Community Assn. v. Ross* (1989) 213 Cal.App.3d 1012, 1021 [“An appellate court is not required to consider alleged error where the appellant merely complains of it without pertinent argument.”].)

liberally construe the pleading with a view to substantial justice between the parties.” (*Staniforth v. Judges’ Retirement System* (2016) 245 Cal.App.4th 1442, 1449.)

2. *The FAC Did Not State a Cause of Action for Breach of Contract*

Van Taylor contends the trial court erred in concluding the action was time-barred. He argues that the statute of limitations did not begin to run on his claims until the judicial foreclosure action was dismissed in 2012.⁴ We disagree.

A cause of action for breach of a written contract is subject to a four-year statute of limitations. (See Code Civ. Proc., § 337.)⁵ “Under the general rule, a cause of action accrues when the wrongful act is done” (*Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1423.) However, under the discovery rule, a claim accrues when the plaintiff discovers or should have discovered all facts essential to his cause of action. (*Ibid.*)

Here, to the extent Van Taylor’s cause of action for breach of contract was based on United’s foreclosure of the deed of trust, it began to accrue when Van Taylor discovered the wrongful act—when he found out United had initiated foreclosure proceedings. At the latest, it accrued when Van Taylor filed his motion to

⁴ Van Taylor raises other arguments that are not properly before us because they involve the earlier foreclosure action filed by United: he argues that the trial court in the prior action did not have jurisdiction over the property involved; and he was not required to file an undertaking in that case. We deny Van Taylor’s motion to augment the record with documents filed in United foreclosure action.

⁵ All undesignated statutory references are to the Code of Civil Procedure.

vacate on the ground that United had foreclosed based on the wrong promissory note. As these events occurred over four years prior to the filing of this action, that claim was time-barred. Although Van Taylor argues that the statute of limitations did not begin to run until the entire foreclosure action was dismissed, he cites to no authority in support of that argument and we know of none.

However, to the extent the breach of contract cause of action was based on United's breach of the alleged settlement agreement in February 2011—when United transferred the property to Feng—Van Taylor is correct that the four-year statute of limitations had not yet run when the present action was filed. In response, United argues that the FAC still failed to state a claim based on breach of the settlement agreement because the allegations established that no written contract was formed. We agree.

“The essential elements of a breach of contract claim are: ‘(1) the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting damages to plaintiff.’ [Citation.]” (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614.) When the signatures of both parties are required before the contract is finalized, the courts have held the contract to be not binding until signed by both parties. (*Anthony Macaroni Co. v. Nunziato* (1935) 5 Cal.App.2d 588, 590; *Helperin v. Guzzardi* (1951) 108 Cal.App.2d 125, 128.)

Here, the FAC attached a copy of the settlement agreement. The agreement showed that only Van Taylor signed the agreement; United did not. Yet the settlement agreement clearly contemplated that both parties’ signatures were required

for its completion—it contained two signature lines, one for Van Taylor and one for United. Accordingly, the contract is incomplete and is not binding on United.⁶

3. *The FAC Did Not State a Cause of Action for “Violations of Right of Redemption”*

Van Taylor argues the court erred in sustaining the demurrer to the cause of action for “violations of right of redemption” because the FAC adequately alleged that United had refused Van Taylor’s timely offer to redeem the property. We conclude the FAC did not allege facts showing that Van Taylor had, in fact, tendered an offer to redeem the property or that United had refused to accept that tender.

The following facts were alleged in the FAC and subject to judicial notice. In June 2009, United obtained a judgment of judicial foreclosure on Van Taylor’s property. The property was then sold at a sheriff’s sale in October 2009. Under section 729.030, Van Taylor had the right to redeem the property during the year following the foreclosure sale. Approximately 11 months later, on September 16, 2010, Van Taylor “exercis[ed] his right to redeem” the property by signing the settlement agreement. However, United “refus[ed] to allow” Van Taylor to redeem the property by transferring the property to Feng.

⁶ To the extent one could construe the FAC as adequate to allege breach of an unsigned, to wit, oral agreement, the action would be time-barred. The statute of limitations for breach of an oral contract is two years (§ 339). The alleged breach occurred in February 2011 when the property was transferred to Feng. The lawsuit was commenced approximately three years later in February 2014.

The original judgment of judicial foreclosure granted Van Taylor the right to redeem the property after foreclosure. (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1236.) Under section 729.030, he had a year after the sale to exercise this right. The statutory scheme governing judicial foreclosures lays out the procedure by which a judgment debtor may exercise the right to redeem: First, a person who seeks to redeem the property “*shall* deposit the redemption price with the levying officer who conducted the sale before the expiration of the redemption period.” (§ 729.060, subd. (a) (emphasis added).) Second—after the person seeking to redeem the property deposits the redemption price—“the levying officer shall tender the deposit to the purchaser. If the purchaser accepts the tender or if the redemption price determined by court order is tendered, the levying officer . . . shall promptly execute and deliver a certificate of redemption to the person seeking to redeem” (§ 729.080, subd. (b) (emphasis added).)

Here, the judicial foreclosure sale occurred in October 2009. Under section 729.030, Van Taylor had a year—until October 2010—to redeem the property. The FAC alleged that Van Taylor “exercised the right to redemption” by signing the settlement agreement in which he agreed to pay the Bank \$478,300 prior to September 30, 2010. The FAC does *not* allege that Van Taylor deposited the redemption price with the levying officer as required by section 729.060. Nor does it allege that United refused to accept any deposit tendered by the levying officer with respect to this property. In fact, Van Taylor acknowledges that he did *not* pay the redemption price because “defendants stopped communicating” with him.

Because the FAC does not allege that Van Taylor tendered the deposit to the levying officer as required by section 729.060, there were no facts showing that Van Taylor exercised his right to redemption or that United violated that right. On this ground, the trial court properly sustained United's demurrer to this cause of action.

DISPOSITION

We affirm. Respondents are to recover their costs on appeal.

RUBIN, ACTING P. J.

WE CONCUR:

GRIMES, J.

ROGAN, J.*

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