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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BOGDAN SZUMILAS, Plaintiff and Appellant, v. WELLS FARGO BANK, N.A., etc. et al., Defendants and Respondents.	B264438 (Los Angeles County Super. Ct. No. LC 093946)

APPEAL from orders of the Superior Court of Los Angeles County, Frank J. Johnson, Judge. Affirmed.

Bogdan Szumilas, in pro. per., Plaintiff and Appellant.

Anglin Flewelling Rasmussen Campbell & Trytten, Robert Collings Little and Robin C. Campbell for Defendant and Respondent Wells Fargo Bank.

Barrett Daffin Frappier Treder & Weiss, and Edward A. Treder for Defendant and Respondent NDeX West.

Bogdan Szumilas appeals the trial court's orders denying his motion for relief under Code of Civil Procedure section 473[1] and granting Wells Fargo Bank's (Wells Fargo) motion for attorney fees. We affirm.

BACKGROUND

Szumilas appealed a judgment entered after the trial court sustained without leave to amend a demurrer to his first amended complaint, filed in propria persona, against Wells Fargo and NDeX West, LLC (NDeX), based upon the foreclosure of Szumilas's home in 2011. We affirmed in part and reversed in part, concluding that Szumilas should have been granted leave to amend his claims for fraud and negligent representation, which stemmed from his allegations that Wells Fargo lied when the bank told him it would not make a loan that he could not afford, and other misrepresentations. (*Szumilas v. Wells Fargo Bank* (Sept. 17, 2014, B240261) [nonpub.opn.].)

The opinion and remittitur were filed in Los Angeles Superior Court on November 25, 2014. On February 2, 2015, 74 days later, Wells Fargo filed an ex parte application to dismiss the action with prejudice pursuant to section 472b.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

That section states: "When an order sustaining a demurrer without leave to amend is reversed or otherwise remanded by any order issued by a reviewing court, any amended complaint shall be filed within 30 days after the clerk of the reviewing court mails notice of the issuance of the remittitur." Szumilas opposed the application and appeared at the hearing on the application held on February 24, 2015. After argument, the trial court ruled that "[b]y any calculation, the statutory deadline has long passed" for Szumilas to file a second amended complaint. The court continued: "While the plaintiff may have some basis for relief pursuant to CCP section 473, there is nothing before the Court at this time."

On April 6, 2015, Szumilas moved to set aside the dismissal of his case with a motion for relief under section 473, subdivision (b), which provides: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Szumilas stated that he missed the deadline to file the second amended complaint due to his own mistake, inadvertence, surprise, or excusable neglect. He explained he first became aware of section 472b's 30-day deadline for filing an amended complaint on February 24 (at the hearing), before which he "had no knowledge whatsoever of Code Civ. Proc. § 472b or that I had a 30 day deadline after the issuance of the Remittitur, or any statutory deadline, to

file an amended complaint." He included as an exhibit a proposed second amended complaint.

Wells Fargo filed an opposition arguing that Szumilas's motion to set aside "is premised solely on ignorance" of section 472b and its filing deadline. In reply, Szumilas repeated that he was ignorant of the statute and its deadline.

After a hearing on May 14, 2015, the trial court's minute order stated, "CCP Section 472b and *Pagarigan v. Aetna U.S. Healthcare of* [*California, Inc.*] (2007) 158 Cal.App.4th 38 [(*Pagarigan*)] govern in this instance. In addition, plaintiff has made no showing pursuant to CCP Section 473 (b) of ground on which to grant the relief requested." (Italics omitted.) The court denied Szumilas's motion to set aside.

The following month, on June 26, 2015, the trial court held a hearing on Wells Fargo's July 6, 2012 motion for attorney fees. In a minute order the same date the court found that the requested fees were reasonably connected to the enforcement of the note, which authorized attorney fees, and the fees requested were reasonable. An order filed July 6, 2015, awarded Wells Fargo $37,632 in fees.

Szumilas filed timely appeals from the orders.

ANALYSIS

Section 473, subdivision (b), the discretionary relief provision of the statute, allows the court in its discretion to grant relief to a party or his or her legal representative from an order against him "though his or her own mistake,

inadvertence, surprise, or excusable neglect."[2] "We review only to detect abuses of discretion." (*Pagarigan*, *supra*, 158 Cal.App.4th at p. 44.) The trial court did not abuse its discretion in dismissing the action.

" 'Mistake is not a ground for relief under section 473, subdivision (b), when "the court finds that the 'mistake' is simply the result of . . . general ignorance of the law . . . ." ' " (*Henderson v. Pacific Gas & Electric Co.* (2010) 187 Cal.App.4th 215, 229.) "[S]ection 472b of the Code of Civil Procedure is 'absolutely completely clear.' " (*Pagarigan*, *supra*, 158 Cal.App.4th at p. 44.) Szumilas's professed total ignorance of section 472b and its crystal-clear 30-day deadline for filing his second amended complaint is thus not excusable mistake warranting discretionary relief. We hold self-represented parties to the same standards as parties represented by counsel. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.) The trial court was within its discretion to deny Szumilas's section 473 motion to set aside.

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[2] Section 473, subdivision (b), makes relief from dismissal mandatory if the motion is "accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect," unless the court finds the attorney's mistake, inadvertence, surprise, or neglect did not cause the dismissal. (*Pagarigan*, *supra*, 158 Cal.App.4th at pp. 43–44.) As Szumilas acted in propria persona, this "attorney-fault provision" (*Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1147) does not apply to his case.

As for the court's award of attorney fees, we reject Szumilas's argument that the note and deed of trust do not support an award. The deed of trust provided that if Szumilas "did not keep [his] promises and agreements made in [the deed of trust] or . . . someone, including me [Szumilas], begins a legal proceeding that may significantly affect Lenders' rights in the Property . . . , Lender may do and pay for whatever it deems reasonable or appropriate to protect the Lender's rights in the property [including] paying reasonable attorney's fees . . . . [¶] I will pay to Lender any amounts which Lender advances under this Paragraph . . . ." The adjustable rate mortgage note provided that in the event Szumilas failed to pay or failed to perform any promise or agreement in the note, "The Lender will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses may include, for example, reasonable attorneys' fees and court costs." (See § 1021.) These provisions entitled Wells Fargo to seek attorney fees incurred in its defense against Szumilas's first amended complaint, which argued that the bank defrauded him, and which claimed wrongful foreclosure, seeking damages and cancellation of the deed of trust, as this constituted a "legal proceeding that may significantly affect Lenders' rights in the property."

It is of no moment that the property had been foreclosed in 2011. "Where, as here, fees are awarded in an action that was not even contemplated prior to foreclosure, it

makes no sense to say that the fees are part of the indebtedness satisfied at the foreclosure sale," and an attorney fees award is " 'neither measured by, nor interrelated to, a deficiency on the note.' " (*Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542, 547.)

Szumilas also challenges the amount of fees awarded, which we disturb only if the fees were "manifestly excessive in the circumstances" so that the trial court abused its discretion. (*Children's Hospital and Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 782.) "[A]n experienced trial judge is in a much better position than [this] court to assess the value of the legal services rendered in [the trial] court." (*Ibid*.)

Szumilas argues that Wells Fargo's motion to dismiss the case after removal to federal court was "unnecessary and pointless," but the case was remanded to the state trial court because Wells Fargo did not join NDeX in the notice of removal. Szumilas claims that Wells Fargo filed duplicative pleadings, but does not provide any citations to the record. Szumilas has not demonstrated that the fees awarded were manifestly excessive. The trial court did not abuse its discretion in awarding fees.

DISPOSITION

The orders are affirmed. Costs are awarded to Wells Fargo Bank and NDeX West.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.