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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

HSBC BANK USA et al.,

Plaintiffs, Cross-defendants and
Respondents,

v.

ROBERT L. WOOD et al.,

Defendants, Cross-complainants and
Appellants.

2d Civil No. B263577
(Super. Ct. No. 56-2012-00414216-
CU-OR-VTA)
(Ventura County)

A borrower seeking loan modification must comply with all of the terms and conditions established by the lender in the modification agreement. Here the borrower refused to comply. The trial court gave judgment to the lender in borrower's action to enforce the modification agreement. We affirm.

FACTS

Robert L. Wood owns a parcel of residential real property in Simi Valley. In October 2006, he obtained a loan from Resmae Mortgage Corporation secured by a deed of trust on the property. Unknown to either Wood or Resmae, the legal description on the deed of trust was incomplete. It mistakenly omitted the property's driveway.

The loan and deed of trust were assigned to HSBC Bank USA; Wells Fargo Bank services the loan (hereafter collectively "Bank").

In March 2009, Wood recorded a grant deed conveying the property to himself and his wife, Maria Chiong.

In 2010, an attorney for the Bank contacted Wood for the purpose of correcting the trust deed's legal description and to have Wood transfer title back into his name alone. After doing some research, Wood agreed that the legal description was incorrect.

By May 2011, Wood had fallen behind in his loan payments. He sent the Bank's attorney a copy of an interspousal grant deed and a modification of the trust deed's legal description but he refused to provide the original documents necessary for recording. He said he had applied for previous loan modifications and had been denied. He said he would send the originals only after the Bank gave him a permanent loan modification reducing the payments and principal balance.

In September 2011, the Bank offered Wood a trial period plan (TPP) under the Home Affordable Modification Program (HAMP).

The TPP letter stated, in part, "After all trial period payments are timely made and you have submitted all the required documents, your mortgage may be permanently modified."

The TPP letter did not specify what documents would be required to be submitted. But Wood understood the reference to include original documents needed to correct the mistake in the trust deed's legal description.

Wood made three payments under the TPP but failed to submit the required documents. Because Wood failed to comply with the TPP, the Bank removed him from the review process. A notice of default under the trust deed was recorded in 2012, but no foreclosure sale has taken place.

The Bank brought the instant action to reform the trust deed's legal description. Wood cross-complained against the Bank for specific performance, damages, violation of the consumer legal remedies act and unfair business practices.

A series of successful demurrers to Wood's cross-complaint led to a second amended cross-complaint stating a single cause of action for declaratory relief. Wood

sought a declaration that the Bank was required to grant him a loan modification and the circumstances under which Wood is required to grant the Bank a secured interest in the driveway.

After a bench trial, the trial court found that a mutual mistake resulted in the property's driveway being omitted from the trust deed's legal description. The court ordered the legal description reformed.

On Wood's cross-complaint, the trial court found that Wood was not entitled to a loan modification. The court concluded that the Bank did not violate HAMP or break any contract by insisting that Wood fulfill his obligation to fix the legal description prior to finalizing the loan modification. Wood forfeited his right to a loan modification by conditioning his performance of correcting the legal description on prior finalization of the loan modification.

Two months after trial, Wood filed a motion for relief from forfeiture. The trial court denied the motion as untimely and without factual or legal basis.

DISCUSSION

I

On appeal, Wood does not contest that the trial court properly reformed the legal description of the trust deed to include the driveway area. Thus, we affirm the trial court's decision. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655.)

II

Wood contends the trial court denied him the benefits of HAMP and contract law in finding he is not entitled to a loan modification.

In response to deteriorating financial conditions in 2008, Congress enacted the Troubled Asset Relief Program (TARP). TARP required the Secretary of the Treasury to implement a plan to minimize residential foreclosures. (12 U.S.C. § 5219(a).) HAMP was born out of this plan. If a borrower qualifies for a loan modification under HAMP, the loan servicer implements a TPP. (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 788.) If after a three-month trial period the borrower has complied with all the terms of the TPP and all of the borrower's

representations remain true and correct, the servicer is required to offer a loan modification. (*Ibid.*)

HAMP does not create a private federal right of action for borrowers against servicers. (*Wigod v. Wells Fargo Bank, N.A.* (7th Cir. 2012) 673 F.3d 547, 559, fn. 4.) But borrowers may assert a state law cause of action for breach of contract, based on the servicer's failure to honor the terms of the TPP. (*Id.* at pp. 581-582.)

Here Wood's TPP provided, "After . . . you have submitted all the required documents, your mortgage may be permanently modified." The trial court found Wood knew what documents were required: an interspousal transfer deed and a modified legal description that included the driveway portion of the property. Wood had discussed the documents with the Bank's attorney and even sent unrecordable copies in a letter to the Bank.

The TPP provides for loan modification only after Wood provides the required documents. Wood did not provide the required documents. The Bank owed Wood no duty to modify the loan. It is as simple as that.

Wood claims he offered to place the documents into escrow. But the TPP is a unilateral offer that can only be accepted by complying with its stated terms. (*Wigod v. Wells Fargo Bank, N.A., supra*, 673 F.3d at p. 562.) Placing documents into escrow is not a stated term of the TPP.

Wood's reliance on Civil Code section 1485 is misplaced. That section provides, "An obligation is extinguished by an offer of performance, made in conformity with the rules herein prescribed, and with the intent to extinguish the obligation." But the rules therein prescribed include, "An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform." (Civ. Code, § 1494.) An offer to perform on terms and conditions not designated in the contract is tantamount to a refusal to perform. (*Lewis v. James* (1955) 134 Cal.App.2d 15, 21.) Wood's terms and conditions requiring the Bank to approve the loan modification before he tendered the documents or requiring the Bank to enter into escrow are tantamount to his refusal to perform.

Nor did the trial court err in denying Wood relief from forfeiture.

Wood's reliance on Civil Code section 3275 is misplaced. That section provides, "Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty."

Here Wood's breach was willful. He intentionally held original title documents hostage until he received a permanent loan modification.

Wood's reliance on Civil Code section 3369 is also misplaced. That section states: "Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or as otherwise provided by law." Here the law of contracts otherwise provides. Wood simply did not fulfill the terms of the TPP. He is not entitled to a permanent loan modification.

Wood's reliance on *West* and its progeny is misplaced. Those cases hold that a borrower who fulfills the terms of the TPP may have a cause of action for breach of contract if the lender does not grant the loan modification. (See *West v. JPMorgan Chase Bank, N.A.*, *supra*, 214 Cal.App.4th at p. 796.) Such cases do not compel a loan modification here because Wood did not fulfill the terms of the TPP.

Finally, the trial court properly sustained demurrers without leave to amend to Wood's causes of action for specific performance, unfair business practices and improper recordation of a notice of default. Those causes of action were based on the allegation that the Bank improperly refused to modify Wood's loan. The allegation was proved untrue at trial. Wood is not entitled to any relief.

III

Wood complains that the legal description in the complaint for reformation does not match the legal description in the judgment.

The legal description in the trust deed covers two parcels, A and B. The complaint requests that the legal description be reformed by adding the driveway area.

The legal description in the complaint does not include parcel B. Wood admitted at trial that the trust deed encompasses parcel B.

Any reasonable person would know that in an action to add the driveway the Bank did not intend to remove parcel B. Any error in the legal description contained in the complaint is harmless.

The judgment is affirmed. Costs on appeal are awarded to respondents.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Vincent J. O'Neill, Judge
Superior Court County of Ventura

Law Offices of Jerome Zamos, Jerome Zamos for Defendants, Cross-complainants, and Appellants Robert L. Wood and Maria Regie Sales Chiong.

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