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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

WELLS FARGO BANK, N.A., Plaintiff and Appellant, v. ALFRED TERTERYAN, Defendant and Respondent.	B267007 (Los Angeles County Super. Ct. No. EC056822)

APPEAL from a judgment of the Superior Court of Los Angeles County. William D. Stewart, Judge. Affirmed.

Paul Hastings, Sean D. Unger, Peter C. Meier; Hemar, Rousso & Heald, Susan A. Gruskin, and Jennifer Witherell Crastz for Plaintiff and Appellant.

Salisian Lee, Neal S. Salisian, H. Han Pai; Richards, Watson & Gershon and T. Peter Pierce for Defendant and Respondent.

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Plaintiff and appellant Wells Fargo Bank, N.A. (Wells Fargo) challenges a judgment entered in favor of defendant and respondent Alfred Terteryan (Terteryan) following trial, finding that Code of Civil Procedure section 580b[1] applied to this dispute and that Wells Fargo was not entitled to a deficiency judgment against Terteryan. Wells Fargo contends that the antideficiency statutes only protect borrowers when the deficiency arises under a deed of trust or mortgage on a dwelling. Because there was no dwelling here, a deficiency judgment should have been entered against Terteryan.

We disagree with Wells Fargo. Because Terteryan obtained the Wells Fargo loan to construct a dwelling, and Wells Fargo knew that that was the purpose of the loan, pursuant to *Prunty v. Bank of America* (1974) 37 Cal.App.3d 430, 439–442 (*Prunty*), Wells Fargo is not entitled to a deficiency judgment.

Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Factual Background

Financing the De Wolfe project

Martiross Jorjezian (Jorjezian), a Canadian real estate developer, came to California to make investments. Yeznik Kazandjian (Kazandjian), Jorjezian's attorney, formed M. Jorjezian Investments, Inc. (the Jorjezian parties) and assisted with purchasing the De Wolfe project, a housing development in Santa Clarita.

The total cost of the De Wolfe project was approximately $2.55 million. Although the subdivision had 50 legal lots, the

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

Jorjezian parties decided to develop 29 lots. Based upon the $2.55 million purchase price and the 29 planned lots, each lot cost the Jorjezian parties approximately $88,000 to acquire.

The Jorjezian parties' plan was to sell the individual lots within the project to homeowners and develop each lot individually. In particular, they would sell each lot from $325,000 to $470,000, use the funds to pay off that lot's share of the original land cost ($88,000) and then use the balance to construct housing on each of the lots.

The Jorjezian parties initially sold the first few lots to family and friends in nonarm's length transactions, which were never marketed, within approximately 10 lots that closed escrow within three to four days of each other. As it turns out, these initial sales were sufficient for the Jorjezian parties to pay off the original seller of the project. Thus, by the time of Terteryan's transaction (discussed below), any new money received by the Jorjezian parties would be used to construct a home.

But the Jorjezian parties needed financing in order to implement this plan. Kirk Hartley (Hartley) was a Wells Fargo branch manager, who spent approximately 16 years with Wells Fargo or its predecessor, Norwest Mortgage. During that time, Hartley sold loans through various roles. Prior to working as a mortgage broker, Hartley worked in the construction field. He was highly experienced with construction loans and had nearly 20 years of experience in constructing homes and 20 years of experience in the banking industry.

As branch manager for Wells Fargo, Hartley was responsible for developing business for the branch, which included meeting with real estate developers in order to reach an agreement about "doing business together."

Hartley first met the Jorjezian parties in or around late 2004 or early 2005, approximately six to eight months before one of the first loans was made on the De Wolfe project. At that time, the goal was for the developer to borrow the money to ultimately build homes on the properties.

But because the Jorjezian parties had difficulty obtaining financing for the entire project, Hartley recommended to the Jorjezian parties that "[l]ot owners should finance the project, not the developer." At the time, Wells Fargo had a product to enable developers to finance an entire development through the sale and making of loans on individual lots, and had previously done this type of transaction on similar developments in the past. Hartley had utilized this product previously, mostly with smaller builders.

Through the meetings between the Jorjezian parties and Wells Fargo, Kazandjian learned that Wells Fargo would provide purchasers with loans and that Wells Fargo only needed the prospective purchaser's name and social security number; it would "do the rest."

Wells Fargo was the lender of approximately 18 to 19 of the 29 lots.

<u>Purpose of the loans for the De Wolfe project</u>

Wells Fargo made available two types of loans to potential borrowers, including Terteryan, for the De Wolfe project: (1) Construction to Permanent Loans (CP loans), and (2) "lot loans." The only difference between the two loans was timing: borrowers who were ready to construct a home immediately would utilize the CP loans, while borrowers who were not ready to construct a residence but wanted to procure the land first and construct the residence later would utilize a lot loan.

Thus, a borrower could obtain a lot loan from Wells Fargo with the intent to build a house. In fact, the ultimate purpose of both CP loans and lot loans was to eventually build homes on the purchased lots.

<u>Terteryan's agreement with the Jorjezian parties</u>

On or about April 6, 2006, Terteryan entered into an agreement that if he invested $150,000 in the De Wolfe project and purchased a lot, the Jorjezian parties would (1) buy back the lot no later than one year later, (2) pay Terteryan $300,000 for a $150,000 profit on his investment, and (3) assume all loans and liabilities attached to the lot (the Terteryan-Jorjezian agreement). Wells Fargo characterizes this agreement as a "secret side agreement." It claims it did not know about this "secret side agreement" until this litigation commenced.

The Terteryan-Jorjezian agreement did not prohibit Terteryan from occupying the property if he chose to do so. In fact, Terteryan understood that he had the option of occupying the property instead of selling it back to Jorjezian.

Shortly after entering into his agreement with Jorjezian, Terteryan reviewed a completed mock-up example of the projected home. After reviewing the projection and liking it, Terteryan selected the option to buy the house once it was completed instead of selling it back to the Jorjezian parties. The Jorjezian parties agreed to the arrangement, but required that Terteryan provide them with another $300,000 if he chose to purchase the completed house. Accordingly, he gave the Jorjezian parties the additional $300,000 for personal upgrades and Jorjezian's profit; he received two liens from the Jorjezian parties as security for that additional payment. Wells Fargo characterizes this agreement as an undisclosed handshake agreement, which it disputes ever occurred.

Terteryan's loan

On or about June 7, 2006, Terteryan entered into a fixed rate loan note agreement (the note agreement) with Wells Fargo. The note agreement evidences a loan obligation of $329,000 by Terteryan to finance the purchase of real property located at 25000 De Wolfe Road in Santa Clarita (the property). The property consisted of one lot within the De Wolfe project. The note agreement is secured by a deed of trust executed and delivered by Terteryan to Wells Fargo, encumbering Terteryan's interest in the property.

Terteryan understood that the purpose of his loan was to secure title to the lot and to build a home on the lot. According to Terteryan, Wells Fargo, through Hartley, was aware of this purpose as Hartley was the one who recommended this financing approach. Wells Fargo, on the other hand, claims that Terteryan only disclosed a vacant land agreement and thus executed a lot loan with the bank. Wells Fargo contends that it did not intend the specific funds of its loan to be used for the progressive construction of a dwelling on Terteryan's lot and that Terteryan did not disclose to anyone at Wells Fargo that he intended to construct a dwelling on the lot he purchased; he presented a land sale only.

In obtaining this loan, Terteryan never applied for any particular loan. Instead, he simply provided his name, address, and social security number to the Jorjezian parties, who handled the rest. Terteryan claims that they did so based upon their arrangement with Wells Fargo.

De Wolfe project fails

The Jorjezian parties never completed the De Wolfe project and Terteryan's home was never built.

As far as the Wells Fargo loan, some payments were made.[2] But the loan was not paid off, and Wells Fargo remains owed $412,065.

Procedural Background

On October 14, 2011, Wells Fargo sued Terteryan for breach of contract, seeking the monies it was owed. Terteryan answered and filed a cross-complaint against Jorjezian and Wells Fargo. Terteryan later filed a first amended cross-complaint and a second amended cross-complaint.

Trial

On June 25, 2013, Wells Fargo filed a first amended complaint for judicial foreclosure and breach of contract against Terteryan. Wells Fargo then filed a motion to bifurcate trial, limiting the first phase of trial to Wells Fargo's judicial foreclosure claim and leaving Terteryan's cross-claims for a second phase. The trial court granted Wells Fargo's motion.

Prior to trial, Terteryan waived all affirmative defenses to Wells Fargo's judicial foreclosure action, "except the anti-deficiency statute, specifically, [section] 580b." In fact, the "chief issue in the trial was the application of California's anti-deficiency statute," section 580b and whether Wells Fargo would be permitted to seek a deficiency judgment for the amount it was owed.

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[2] As set forth in the trial court's statement of decision, Jorjezian made some payments on Terteryan's behalf, and Terteryan made some of the payments.

Judgment and Appeal

On July 21, 2015, the trial court issued its final statement of decision, granting judicial foreclosure, denying Wells Fargo a deficiency judgment, and ordering that the lot be sold. The trial court found that Terteryan never built a dwelling on the lot, never occupied a dwelling on the lot, never disclosed to Wells Fargo his intent to construct a dwelling on the lot, and that none of the proceeds of Terteryan's lot loan were used to build a dwelling on the lot. Nevertheless, the trial court determined that section 580b applied, and thus refused to order a deficiency judgment. In so ruling, the trial court determined that it could not "ignore the evidence that a manager of the bank knew that the developer Jorjezian was supposed to be using the funds to finance the development—in fact the very same manager had suggested it." And, "[p]art of [that] knowledge . . . included the manager's state of mind that the proceeds of the loans to be made by Wells Fargo Bank as the 'preferred lender' were to be used to construct homes."

Notably, the trial court determined that at Terteryan's "first involvement with the project, it [was] clear that he was an investor, and would not be entitled to the protection of [section] 580b." However, "[t]here is no date for intention to be determined with precision" and Terteryan's "intentions changed," switching him "from investor to home buyer."

Wells Fargo's timely appeal ensued.

DISCUSSION

I. *Standards of review*

To the extent we are called upon to interpret the relevant statutes and draw conclusions of law, we do so de novo. (*Kurtz v. Calvo* (1999) 75 Cal.App.4th 191, 193.)

We review the trial court's findings of fact for substantial evidence. (*Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1178, fn. 27.)

II. *The trial court's judgment is affirmed*

California's antideficiency statutes are codified at sections 580a through 580d and 726. "'[E]nacted during the Depression, [these provisions] limit or prohibit lenders from obtaining personal judgments against borrowers where the lender's sale of real property security produces proceeds insufficient to cover the amount of the debt.' [Citation.] They reflect 'a considered course on the part of the Legislature to limit strictly the right to recover deficiency judgments.' [Citation.] The statutes were designed to accomplish several objectives: "'(1) to prevent a multiplicity of actions, (2) to prevent an overvaluation of the security, (3) to prevent the aggravation of an economic recession which would result if creditors lost their property and were also burdened with personal liability, and (4) to prevent the creditor from making an unreasonably low bid at the foreclosure sale, acquire the asset below its value, and also recover a personal judgment against the debtor."' [Citation.] Accordingly, "'the courts have exhibited a very hospitable attitude toward the legislative policy underlying the anti-deficiency legislation and have given it a broad and liberal construction that often goes beyond the narrow bounds of the statutory language."' [Citation.]" (*CADC/RADC Venture 2011-1 LLC v. Bradley* (2015) 235 Cal.App.4th 775, 783–784; see also *Coker v. JPMorgan Chase Bank, N.A.* (2016) 62 Cal.4th 667, 678–680 [reviewing *Spangler v. Memel* (1972) 7 Cal.3d 603 and noting that a variation on the standard purchase money mortgage or deed of trust transaction should be examined to determine whether it serves the purposes of section 580b];

5 Miller & Starr, Cal. Real Estate (4th ed. 2016) § 13:286, pp. 13-1227 to 13-1228 [setting forth the policy objectives achieved by section 580b], 5 Miller & Starr, *supra*, § 13:286, pp. 13-1230 to 13-1231 [in determining whether the antideficiency limitations apply to a nonstandard transaction, courts analyze the factual setting of the transaction to determine whether it falls within the purposes of the statute].)

One of these statutes, section 580b, subdivision (a)(3), provides, in relevant part: "Except as provided in subdivision (c), no deficiency shall be owed or collected, and no deficiency judgment shall lie, for any of the following: . . . [¶] (3) Under a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan that was used to pay all or part of the purchase price of that dwelling, occupied entirely or in part by the purchaser." Consistent with the policy of liberal construction, this statute has been interpreted to mean that exempted from deficiency judgment is a deed of trust or mortgage securing the loan used to construct a dwelling to be occupied by the borrower. (*Prunty*, *supra*, 37 Cal.App.3d at pp. 439–442.) As another court noted, "*Prunty* arguably fell within section 580b following a 1963 amendment [to section 580b] adding the protection afforded a 'dwelling,' and was likely aimed at eliminating the inequitable situation where the purchaser of real property with an existing house was protected by section 580b and the purchaser of real property who later built a house on the lot was not. [Citation.]" (*Union Bank v. Anderson* (1991) 232 Cal.App.3d 941, 948.)

We agree with the trial court that, pursuant to *Prunty*, Wells Fargo is not entitled to a deficiency judgment. As set forth above, section 580b encompasses a loan to build a dwelling to be occupied by the borrower. And, ample evidence supports the trial court's finding that Terteryan obtained the Wells Fargo loan to construct a home on the property. Terteryan understood that the purpose of his Wells Fargo loan was to secure title to the property and build a home on the lot. Wells Fargo, through Hartley, was aware of this purpose as Hartley was the one who recommended this financing approach.

In urging us to reverse, Wells Fargo points to the words of section 580b and argues that pursuant to its plain language, the statute only applies to dwellings, which must mean "existing" dwellings. But the statute does not mandate that the dwelling be an *already existing* dwelling at the time of the execution of the loan.[3] At best for Wells Fargo, the statute is ambiguous. Given this assumed ambiguity as to whether the statute only applies to existing dwellings, we turn to well-established rules of statutory construction.

"When engaging in statutory construction, we first look to the words of the statute and ""try to give effect to the usual, ordinary import of the language"" in order to effectuate the intent of the Legislature. [Citations.] A close corollary is that we must reject an interpretation that is plainly contraindicated. But not every statute is a beacon of clarity. An interpreting court must go behind a statute's language when it is susceptible of more than one reasonable interpretation. To decipher the purpose of an ambiguous statute, a court may consider the ostensible objects to

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[3] For that reason, among others, the *Prunty* court held that section 580b barred a deficiency judgment against a borrower who obtained a construction loan to build a dwelling on land already owned by him. (*Prunty*, *supra*, 37 Cal.App.3d at p. 432.)

be achieved by the statute, the statutory scheme of which the statute is a part, the evils to be remedied, public policy, the legislative history, and the wider historical circumstances of the enactment. [Citations.] That said, '[t]he interpretation should be practical, not technical, and should result in wise policy rather than mischief or absurdity.' [Citation.]" (*AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747, 758–759.)

Applying these principles, we reject Wells Fargo's interpretation of section 580b. As our Supreme Court has noted, section 580b protects borrowers if they come within the purpose of the statute. (*Spangler v. Memel*, *supra*, 7 Cal.3d at p. 610.) Among the purposes of the antideficiency statutory scheme is the protection of residential construction borrowers from unsound loans, particularly in light of the fact that the lenders involved are able to protect themselves. (*Prunty*, *supra*, 37 Cal.App.3d at pp. 441–442; see also 5 Miller & Starr, Cal. Real Estate, *supra*, § 13:286, p. 3-1231 ["a deficiency judgment is precluded when the circumstances of the transaction serve the policies of the statute" and "[w]here these policies are served, the vendor [or lender] is presumed to know the value of the property and is required to assume the risk that the security may be inadequate"].) That is exactly the situation here. Terteryan, the borrower, relied heavily upon Wells Fargo's representative, Hartley, in obtaining his loan with Wells Fargo. Hartley was the person who recommended the type of loan, and the Jorjezian parties handled the processing of the loan based upon their arrangement with Wells Fargo. Under these circumstances, Terteryan is entitled to antideficiency protection.

Wells Fargo asks us to set aside the trial court judgment on the grounds that *Prunty* is factually distinguishable. After all, using the proceeds of the construction loan, the borrowers in *Prunty* were able to construct a single family residence and occupy it before a landslide caused such damage to the residence that it had to be demolished. (*Prunty*, *supra*, 37 Cal.App.3d at p. 434.) Here, on the other hand, no dwelling had yet been constructed or occupied. This factual distinction does not compel reversal. The *Prunty* court looked at the parties' intent when executing the relevant loan documents. (*Id*. at p. 443; see also *Paramount Sav. & Loan Assn. v. Barber* (1968) 263 Cal.App.2d 166, 169 ["the principle is well established that the nature of a trust deed is determined at the time it is executed"].) Looking at the evidence in this case reveals the parties' intent: Terteryan obtained the Wells Fargo loan to build a dwelling that he would occupy on the lot he purchased, and Wells Fargo knew that that was the purpose of the loan it created for him.

Wells Fargo contends that Terteryan's testimony was inconsistent and that the evidence actually shows that he "changed his intent." In a related argument, Wells Fargo argues that Terteryan should have been bound by his responses to Wells Fargo's form interrogatories regarding supporting documentation[4] and by the allegations in his cross-complaint; neither his discovery responses nor the operative cross-complaint mentioned the alleged "handshake deal." To the extent Wells Fargo asks us to discredit Terteryan's testimony, we will not do so. It is well-established that "[o]n substantial evidence review,

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[4] In so arguing, Wells Fargo relies heavily upon a bank statement offered into evidence. Because we reach our conclusion without reference to this bank statement, Wells Fargo's argument is irrelevant.

we do not 'weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it.'" (*Do v. Regents of University of California* (2013) 216 Cal.App.4th 1474, 1492.)

As for the alleged judicial admissions, we see none. According to Wells Fargo, if Terteryan had actually been cheated out of $300,000, he would have so pled in any one of his cross-complaints. Because he waited to raise this argument until this litigation was in progress, and after he filed and served his second amended cross-complaint, Wells Fargo asserts that we must "conclude that there was no change in [his] intent," meaning that Terteryan did not intend to build a dwelling on the lot he purchased. Wells Fargo interprets the judicial admission doctrine and reads the operative cross-complaint (and its prior iterations) too broadly. While an admission of fact in a pleading constitutes a judicial admission (*Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271), Terteryan here never pled anything inconsistent with his theory at trial—according to his second amended cross-complaint, Wells Fargo made him a loan "knowing that a house was going to be built on the [p]roperty." The fact that Terteryan did not plead any claim regarding the additional $300,000 that he gave to Jorjezian does not preclude Terteryan from asserting the antideficiency statute as a defense to Wells Fargo's claims against him.

Finally, we note that *Allstate Savings & Loan Assn. v. Murphy* (1979) 98 Cal.App.3d 761 is readily distinguishable. In that case, the borrower obtained a loan to construct a swimming pool, not a dwelling. (*Id*. at pp. 763–764.) Here, as in *Prunty*, the purpose of Terteryan's loan was to build a dwelling.

DISPOSITION

The judgment is affirmed. Terteryan is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

_____________________, Acting P. J.
ASHMANN-GERST

We concur:

_____________________, J.
HOFFSTADT

_____________________, J.
KRIEGLER