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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

DAVID FEE,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK,
N.A.,

Defendant and Respondent.

2d Civil No. B276256
(Super. Ct. No. 16CV00903)
(Santa Barbara County)

David Fee appeals judgment after an order sustaining without leave to amend the demurrer of JPMorgan Chase Bank, N.A. (Chase) to a cause of action for rescission and declaratory relief under the Truth in Lending Act (TILA). (15 U.S.C. § 1601 et seq.) The trial court abated Fee's causes of action for declaratory relief, negligence, and violation of the Homeowner's Bill of Rights pending resolution of the appeal in another case that involves the same loan, the same property, and similar claims. We recently resolved that appeal against Fee. (*Fee v. JPMorgan Chase Bank, N.A., et al.* (Mar. 21, 2017,

B263042) [nonpub. opn.] [affirming judgment after dispositive orders against Fee on all causes of action].)

We dismiss this appeal because it is from a nonappealable order. It is also without merit.

BACKGROUND

In 2006, Fee borrowed \$2.25 million from Washington Mutual Bank, FA, (WaMu) to refinance a “second home” in Montecito. In 2008, Chase purchased WaMu’s assets from WaMu’s receiver, the Federal Deposit Insurance Corporation (FDIC). After Fee defaulted on the loan, the trustee initiated nonjudicial foreclosure proceedings.

In 2016, Fee filed this complaint against Chase and others for rescission under TILA, among other things. He alleges he “recently mailed notice of said rescission to Defendants” and he “hereby rescinds” the loan. He alleges WaMu was a “pretender lender,” the loan documents did not identify the true lender, and therefore the loan was never consummated and the statutory time limit for rescission under TILA does not apply. He does not allege any specific violation of TILA.

DISCUSSION

Fee appeals the order sustaining a demurrer to only one of several causes of action. But an order sustaining a demurrer to one, but not all, causes of action is not appealable. (Code Civ. Proc., § 904.1; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741.)

Even if we were to exercise our discretion to treat this appeal as a petition for a writ of mandate, we would summarily deny it because Fee does not state a claim for relief under TILA and could not amend to cure the defect. The claim is time-barred because Fee gave notice of rescission in 2016, more

than three years after he consummated the loan in 2006. (15 U.S.C. § 1635(f); 12 C.F.R. § 226.23(a)(3) (2017); *Jesinoski v. Countrywide Home Loans, Inc.* (2015) 574 U.S. ____ [135 S.Ct. 790, 792].) The loan was consummated when Fee signed the note and deed of trust and became contractually obligated on the credit transaction. (12 C.F.R. § 226.2(a)(13) (2017); Civ. Code, § 1550; see *In re Ramsey* (Bankr. 9th Cir. 1994) 176 B.R. 183, 187 [loan “consummated” on the date borrower signed the promissory note and deed of trust and agreed to borrow money from an identifiable lender, notwithstanding later modification to amount financed].) This case is unlike *Jackson v. Grant* (9th Cir. 1989) 890 F.2d 118, 119 in which no lender was identified. Here, the loan documents identified WaMu as the lender. Accordingly, Fee did not timely exercise his right to rescind. (15 U.S.C. § 1635(b).)

DISPOSITION

The appeal is dismissed. Respondent shall recover its costs on appeal.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Colleen K. Sterne, Judge

Superior Court County of Santa Barbara

David Fee, in pro. per.; Holman & Martin and John
Holman, for Plaintiff and Appellant. [*Retained.*]

Bryan Cave, Glenn J. Plattner and Richard P.
Steelman, Jr., for Defendant and Respondent.