

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

De Jong v. Nationstar Mortgage LLC

De Jong · No. 24-cv-00622-JST · Decided May 12, 2025

SUMMARY

The United States District Court for the Northern District of California granted Nationstar Mortgage LLC’s motion for summary judgment in Mark De Jong’s mortgage-servicing action. The court held that a 2020 settlement agreement barred the lawsuit because De Jong had not reinstated or paid off the loan as required, and rejected his arguments that Nationstar waived enforcement or prevented performance. The court also denied De Jong’s request for leave to amend to add a claim under California Civil Code section 2923.6.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jon S. Tigar
JURISDICTION	United States District Court for the Northern District of California
DECIDED	May 12, 2025
DOCKET	24-cv-00622-JST
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved for summary judgment on all four claims asserted by Plaintiff. Plaintiff also sought leave to amend to add a claim under California Civil Code section 2923.6. The court granted summary judgment and denied leave to amend.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. The court must draw all justifiable inferences for the nonmoving party and may not weigh evidence or make credibility determinations. If the moving party satisfies its initial burden, the nonmoving party must produce admissible evidence showing a genuine dispute of material fact.
PRECEDENTIAL VALUE	Unknown; district court opinion with no stated precedential status.

TOPICS

summary judgment

waiver

contracts

real estate

civil procedure

PRACTICE AREAS

civil procedure

mortgage litigation

contract law

real estate law

consumer protection

QUESTIONS PRESENTED

1. Whether the 2020 settlement agreement barred Plaintiff's action because he failed to reinstate or pay off the mortgage by November 30, 2020 and waived defenses challenging foreclosure.
2. Whether Nationstar waived enforcement of the 2020 settlement agreement by working with Plaintiff through a later forbearance period.
3. Whether Nationstar's alleged misconduct prevented Plaintiff from satisfying the settlement agreement's reinstatement or payoff condition.
4. Whether Plaintiff should receive leave to amend under Federal Rules of Civil Procedure 15(a)(2) and 16(b)(4) to add a claim under California Civil Code section 2923.6.

HOLDINGS

1. The 2020 settlement agreement barred Plaintiff's lawsuit because he did not reinstate or fully pay off the loan by November 30, 2020 and had expressly waived defenses challenging foreclosure or the foreclosure process.
2. Plaintiff failed to raise a triable issue that Nationstar waived enforcement of the settlement agreement merely by placing the loan into forbearance and working with him to avoid foreclosure.
3. Plaintiff could not avoid enforcement of the settlement agreement based on the principle that a party may not rely on a condition it prevented because he presented no evidence that Nationstar prevented him from reinstating or paying off the mortgage.
4. Leave to amend was denied because Plaintiff sought amendment after the court's deadline and failed to show the diligence required for good cause under Rule 16(b)(4).

KEY QUOTATIONS

“To establish waiver under generally applicable contract law, the party opposing enforcement of a contractual agreement must prove by clear and convincing evidence that the waiving party knew of the contractual right and intentionally relinquished or abandoned it.” (at 2)

“A party to a contract cannot take advantage of his own act or omission to escape liability thereon. Where a party to a contract prevents the fulfillment of a condition or its performance by the adverse party, he cannot rely on such condition to defeat his liability.” (at 2)

FACTUAL BACKGROUND

Mark and Manuela De Jong obtained a residential mortgage in 2007, defaulted in 2015, and later entered into a loan modification. After another default in 2019, De Jong entered a 2020 settlement agreement placing the loan in forbearance through November 30, 2020, while expressly acknowledging the debt, agreeing to reinstate or pay

off the loan by that date, and waiving defenses to foreclosure if he failed to do so. The forbearance was extended through November 2021, but De Jong never reinstated or paid off the loan and made no payments after June 2019. He then filed this fourth action asserting claims under California mortgage-servicing law, contract law, tort law, and the Unfair Competition Law.

PROCEDURAL HISTORY

Plaintiff filed this action in California state court twelve days after voluntarily dismissing a prior action against Nationstar. Nationstar removed the case to the Northern District of California under diversity jurisdiction. After briefing on Nationstar's summary-judgment motion, the court granted the motion based on a 2020 settlement agreement and denied Plaintiff's request for leave to amend.

DISPOSITION

other

CASES CITED

- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)
- C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474, 480 (9th Cir. 2000)
- Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000)
- Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102-03 (9th Cir. 2000)
- Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996)
- Richards v. Combined Ins. Co., 55 F.3d 247, 251 (7th Cir. 1995)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)
- Quach v. Cal. Com. Club, Inc., 16 Cal. 5th 562, 584 (2024)
- Nelson v. Reisner, 51 Cal. 2d 161, 171 (1958)
- Unruh v. Smith, 123 Cal. App. 2d 431, 437 (1954)
- Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)

OPINION

De Jong v. Nationstar Mortgage LLC

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 MARK DE JONG, Case No. 24-cv-00622-JST 8 Plaintiff,

ORDER GRANTING DEFENDANT’S

9 v. MOTION FOR SUMMARY

JUDGMENT

10 NATIONSTAR MORTGAGE LLC,

Re: ECF No. 23 Defendant. 11 12 13 Before the Court is Defendant Nationstar Mortgage LLC's motion for summary judgment. 14 ECF No. 23. The Court will grant the motion.

15 I. BACKGROUND

16 This case concerns Plaintiff Mark De Jong's mortgage for a residential property located in 17 Petaluma, California. The following facts are undisputed, see ECF No. 28-3 (De Jong's response 18 to Nationstar's statement of undisputed facts): De Jong and Manuela De Jong (collectively, 19 "Borrowers") obtained the mortgage in June 2007. Nationstar began servicing the loan on July 1, 20 2013. Borrowers' interest in the property was transferred to De Jong as an individual in January 21 2016, but the mortgage has never been refinanced. 22 Borrowers defaulted on the loan in 2015. De Jong sued Nationstar in May 2017. While a 23 motion to dismiss was pending, Borrowers agreed to and were approved for a loan modification in

24 December 2017, and De Jong voluntarily dismissed the lawsuit.

25 Borrowers defaulted again in 2019. The May 2019 mortgage payment remains due, and no 26 payments have been made on the loan since June 2019. 27 De Jong sued Nationstar for a second time in February 2020. The parties resolved that 1 place Plaintiff's Loan into Forbearance, which shall remain in effect 2 until November 30, 2020, and during this time Defendant shall not proceed with foreclosure. Notwithstanding this forbearance, nothing 3 herein shall otherwise waive or release Plaintiff from his obligations under the Note and Deed of Trust, and Plaintiff remains liable and 4 affirms all payments and obligations due thereunder.

5 Id. at 76. De Jong agreed that, if he did "not reinstate the Loan or provide a complete and total 6 payoff of the Loan on or before November 30, 2020," he would: 7 acknowledge[] that he defaulted under the terms and conditions of 8 the Note and Deed of Trust, and . . . consent[] to Defendant . . . proceeding with a consent, judicial, or non-judicial foreclosure. 9 Plaintiff expressly waives any and all rights and defenses he may have to challenge[] or contest said foreclosure or sale, including, but 10 not limited to, any claims or defenses contesting his default under the Note and Deed of Trust or contesting the validity of the 11 foreclosure process or sale. 12 Id. 13 Borrowers' forbearance was subsequently extended through the end of November 2021. 14 Since that time, De Jong has submitted five loan modification applications, including one during 15 the pendency of this lawsuit. Each application has been denied. 16 De Jong sued Nationstar for a third time in June 2022. He voluntarily dismissed that case 17 on December 8, 2023, while a motion for judgment on the pleadings was pending. He filed this 18 case in state court twelve days later, and Nationstar removed the case to this Court on February 2, 19 2024. ECF No. 1. 20 The complaint asserts four claims for relief: (1) violation of California Civil Code Section 21 2923.7; (2) breach of the implied covenant of good faith and fair dealing; (3) intentional 22 interference with prospective economic advantage; and (4) violation of California Business and 23 Professions Code Section 17200 et. seq., California's Unfair Competition Law. Nationstar has 24 moved for summary judgment on all claims.

25 II. JURISDICTION

26 The Court has jurisdiction under 28 U.S.C. § 1332(a).

27 III. LEGAL STANDARD

1 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). 2 A dispute is genuine only if there is sufficient evidence “such that a reasonable jury could return a 3 verdict for the nonmoving party,” and a fact is material only if it might affect the outcome of the 4 case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When deciding a motion for 5 summary judgment, the court must draw “all justifiable inferences” in the nonmoving party’s 6 favor and may not weigh evidence or make credibility determinations. *Id.* at 255. 7 Where the party moving for summary judgment would bear the burden of proof at trial, 8 that party “has the initial burden of establishing the absence of a genuine issue of fact on each 9 issue material to its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 10 480 (9th Cir. 2000). Where the party moving for summary judgment would not bear the burden of 11 proof at trial, that party “must either produce evidence negating an essential element of the 12 nonmoving party’s claim or defense or show that the nonmoving party does not have enough 13 evidence of an essential element to carry its ultimate burden of persuasion at trial.” *Nissan Fire & 14 Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). If the moving party satisfies 15 its initial burden of production, the nonmoving party must produce admissible evidence to show 16 that a genuine issue of material fact exists. *Id.* at 1102–03. It is not the court’s duty “to scour the 17 record in search of a genuine issue of triable fact”; instead, the nonmoving party must “identify 18 with reasonable particularity the evidence that precludes summary judgment.” *Keenan v. Allan*, 19 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 20 (7th Cir. 1995)). If the nonmoving party fails to make the required showing, the moving party is 21 entitled to summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

22 IV. DISCUSSION

23 A. Effect of 2020 Settlement Agreement 24 Nationstar argues that De Jong’s lawsuit is barred by the 2020 settlement agreement. 25 De Jong does not dispute the existence of that agreement or its terms. Instead, he argues that: 26 (1) Nationstar waived enforcement of the agreement by “plac[ing] Plaintiff’s loan into a 27 forbearance agreement that endured for a year,” an act that De Jong contends “nullified the 1 invoke,” and (2) Nationstar cannot “invoke the terms of a settlement agreement to insulate it from 2 its own misconduct.” ECF No. 28 at 11–12. Although De Jong relies on correct statements of 3 law, neither argument is persuasive based on the undisputed facts of this case. 4 First, De Jong has not met his burden to show a triable issue as to whether Nationstar 5 waived enforcement of the agreement. “To establish waiver under generally applicable contract 6 law, the party opposing enforcement of a contractual agreement must prove by clear and 7 convincing evidence that the waiving party knew of the contractual right and intentionally 8 relinquished or abandoned it.” *Quach v. Cal. Com. Club, Inc.*, 16 Cal. 5th 562, 584

(2024). In 9 this case, nothing in the agreement required Nationstar to seek foreclosure immediately, nor did 10 the agreement prohibit Nationstar from attempting to work with De Jong to avoid foreclosure. 11 De Jong has cited no authority, and this Court is aware of none, for the proposition that voluntarily 12 working with an adverse party to attempt to reach an alternate resolution to a contracted 13 outcome—in this case, foreclosure—is “so inconsistent with an intent to enforce the contractual 14 right as to lead a reasonable factfinder to conclude that the party had abandoned it.” Id. 15 Second, De Jong argues that Nationstar’s misconduct makes it inequitable to enforce the 16 agreement but relies on an inapposite principle of contract law to support his argument. He seeks 17 to apply the principle that “[a] party to a contract cannot take advantage of his own act or omission 18 to escape liability thereon. Where a party to a contract prevents the fulfillment of a condition or 19 its performance by the adverse party, he cannot rely on such condition to defeat his liability.” 20 *Nelson v. Reisner*, 51 Cal. 2d 161, 171 (1958) (quoting *Unruh v. Smith*, 123 Cal. App. 2d 431, 437 21 (1954)). But De Jong presents no evidence of any conduct by Nationstar that prevented De Jong 22 from fulfilling the condition that he reinstate or pay off the mortgage prior to November 30, 2020. 23 Thus, the principle on which De Jong relies has no relevance to this case. 24 De Jong does not present any evidence that he “reinstate[d] the Loan or provide[d] a 25 complete and total payoff of the Loan on or before November 30, 2020,” ECF No. 26 at 76, and, 26 to the contrary, agrees that “[t]he last payment applied to the Loan was made in June 2019,” ECF

27 No. 28-3 at 4. Nor does De Jong dispute that he filed this lawsuit to “stop the foreclosure
1 valid and enforceable, the 2020 agreement bars this lawsuit, see ECF No. 28 at 11-12. 2 ||
Accordingly, having rejected both of De Jong’s arguments as to why the 2020 agreement should 3
not be enforced, the Court concludes that Nationstar is entitled to summary judgment based on 4 ||
that agreement. The Court does not reach the parties’ remaining arguments regarding the merits of
5 || De Jong’s claims. 6 B. Leave to Amend 7 In his opposition brief, De Jong seeks leave to
amend, under Rule 15(a)(2) of the Federal 8 Rules of Civil Procedure, to state a new claim for
violation of California Civil Code Section 9 2923.6. However, the Court set a deadline of May 17,
2024, to amend the pleadings and 10 || explained that, “[a]fter this deadline, a party may still seek
amendment, but must demonstrate 11 good cause. Fed. R. Civ. P. 16(b)(4).” ECF No. 13 at 1 &
n.1. “Rule 16(b)’s ‘good cause’ 12 || standard primarily considers the diligence of the party seeking
the amendment.” *Johnson v. 13 Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). De
Jong has not even attempted 14 || to show diligence, and his request for leave to amend is therefore
denied.

3 15 CONCLUSION

a 16 For the foregoing reasons, Nationstar’s motion for summary judgment is granted. The 3 17
Clerk shall enter judgment and close the file. 18 IT IS SO ORDERED. 19 || Dated: May 12, 2025 .
20 JON S. TIGA

71 United States District Judge 22 23 24 25 26 27 ' The Court considers this request even though

De Jong did not file a motion seeking such relief 28 and also failed to comply with the Civil Local Rules' requirement that "[a]ny party . . . moving to file an amended pleading must reproduce the entire proposed pleading." Civil L.R. 10-1.

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