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)