UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Sewell v. Franklin Credit Management Corporation; Bosco Credit, LLC; and Prestige Default Services, LLC

Sewell v. Franklin Credit Management Corporation, No. 2:24-cv-1788-TLN-SCR (E.D. Cal. Mar. 17, 2025) · No. 2:24-cv-1788-TLN-SCR · Decided March 18, 2025

SUMMARY

The document contains findings and recommendations on defendants' motion to dismiss claims arising from a mortgage loan and foreclosure process. The magistrate judge recommends dismissal without leave to amend of the fifth and sixth causes of action, dismissal with leave to amend of the first through third causes of action, dismissal of the seventh, ninth, and tenth causes of action with leave to reassert them after amendment, and denial of dismissal as to the eighth cause of action. The recommendations were issued for review by the assigned district judge under 28 U.S.C. § 636(b)(1).

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 18, 2025
DOCKET	2:24-cv-1788-TLN-SCR
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge on defendants' Rule 12(b)(6) motion to dismiss nine of plaintiff's ten causes of action in a removed mortgage-foreclosure action.
STANDARD OF REVIEW	Under Federal Rule of Civil Procedure 12(b)(6), the court accepts well-pleaded factual allegations as true, draws reasonable inferences for the nonmoving party, and determines whether the complaint states a facially plausible claim for relief. A complaint may be dismissed on an affirmative defense apparent from the complaint and judicially noticeable or incorporated documents, but dismissal is improper when those materials raise disputed issues of fact. Pro se allegations are construed liberally, subject to the limitation that the plaintiff was represented by counsel when the complaint and opposition were filed.

PRECEDENTIAL VALUE	nonprecedential

TOPICS

motions to dismiss · wrongful foreclosure · mortgages · contracts · civil procedure

PRACTICE AREAS

civil procedure · mortgages · wrongful foreclosure · contracts · consumer protection · torts

QUESTIONS PRESENTED

1. Whether the notice of default and recorded foreclosure documents could be considered through judicial notice or incorporation by reference on the Rule 12(b)(6) motion.
2. Whether a deed of trust may serve as the contractual basis for breach-of-contract and implied-covenant claims under California law.
3. Whether plaintiff's alleged nonperformance under the deed of trust defeated his breach-of-contract, negligence, and implied-covenant claims at the pleading stage.
4. Whether plaintiff's fifth and sixth causes of action should be dismissed based on his concession that the notice of default contained the allegedly missing statutory language.
5. Whether the seventh, ninth, and tenth causes of action were derivative of claims subject to dismissal.
6. Whether the eighth California Unfair Competition Law cause of action adequately alleged an underlying violation of 12 C.F.R. § 1026.41.

HOLDINGS

1. The court may judicially notice the existence, recordation, date, parties, and legally operative language of recorded foreclosure documents when their authenticity is not genuinely disputed, and may consider a document incorporated by reference when the complaint necessarily relies on it, refers to it, and the document is central to the claims.
2. For purposes of the pleaded claims, a deed of trust is a contract that can provide a basis for breach-of-contract and implied-covenant claims under California law.
3. The breach-of-contract, negligence, and implied-covenant claims should be dismissed because the complaint and incorporated notice of default establish plaintiff's nonperformance under the deed of trust and do not adequately allege that his nonperformance was excused.
4. The fifth and sixth causes of action should be dismissed without leave to amend because plaintiff did not oppose dismissal after defendants demonstrated that the notice of default contained the required statutory language.
5. The seventh, ninth, and tenth causes of action should be dismissed, with leave to reassert them after amendment of an underlying first, second, or third cause of action, because they were pleaded as derivative of predicate claims subject to dismissal.

6. The eighth cause of action should not be dismissed because the alleged violation of 12 C.F.R. § 1026.41 was sufficient to plead a California UCL claim.

KEY QUOTATIONS

> *"To survive, the plaintiff's complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'""* (at 4)

> *"a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts."* (at 8)

> *"The status of a DOT as a contract is a question of state law, and the Hatch court appears to have reiterated the law on that question by holding that a DOT is "a contract between the trustor and the beneficiary[.]""* (at 9)

FACTUAL BACKGROUND

Plaintiff executed a $65,000 mortgage loan note and deed of trust secured by residential property in Elk Grove, California. The deed of trust allegedly required written notices to be sent to the borrower's property address. Plaintiff alleged that defendants recorded a notice of default on February 7, 2024, without providing the contractually required notice, proceeded toward a trustee sale, and deprived him of an opportunity to cure. The complaint also admitted that plaintiff had struggled to make required mortgage payments.

PROCEDURAL HISTORY

Plaintiff filed suit in Sacramento County Superior Court on June 17, 2024. Defendants removed the action to the Eastern District of California on June 25, 2024, and moved to dismiss nine of ten causes of action. After plaintiff's opposition was filed late and the resulting order to show cause was vacated, plaintiff's counsel withdrew and the matter was referred to Magistrate Judge Sean C. Riordan. The magistrate judge recommended partial dismissal, leave to amend or reassert certain claims, and denial of dismissal as to the eighth cause of action; the recommendation was submitted to the assigned district judge under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

REMAND INSTRUCTIONS

The magistrate judge recommended that the assigned district judge grant dismissal without leave to amend as to the fifth and sixth causes of action; grant dismissal with leave to amend as to the first, second, and third causes of action; deny dismissal as to the eighth cause of action; and grant dismissal as to the seventh, ninth, and tenth causes of action with leave to reassert them after amendment of the first, second, or third causes of action. Plaintiff may file objections within fourteen days under 28 U.S.C. § 636(b)(1) and Local Rule 304(d).

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)

- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Boquist v. Courtney, 32 F.4th 764, 773-74 (9th Cir. 2022)
- Retail Property Trust v. United Brotherhood of Carpenters & Joiners of America, 768 F.3d 938, 945 (9th Cir. 2014)
- Weston Family Partnership LLLP v. Twitter, Inc., 29 F.4th 611, 617-18 (9th Cir. 2022)
- Haines v. Kerner, 404 U.S. 519, 520 (1972)
- McQueen v. Alabama Department of Transportation, 17-CV-0215, 2018 WL 2709319, at *4 (M.D. Ala. June 5, 2018)
- Sams v. Yahoo! Inc., 713 F.3d 1175, 1179 (9th Cir. 2013)
- Jones v. Bock, 549 U.S. 199, 215 (2007)
- Goddard v. Google Inc., 640 F. Supp. 2d 1193, 1199 n.5 (N.D. Cal. 2009)
- ASARCO, LLC v. Union Pacific Railroad Co., 765 F.3d 999, 1004 (9th Cir. 2014)
- Scott v. Kuhlmann, 746 F.2d 1377, 1378 (9th Cir. 1984) (per curiam)
- Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000)
- In re Doe, 58 F.3d 494, 497 (9th Cir. 1995)
- Akhtar v. Mesa, 698 F.3d 1202, 1213 (9th Cir. 2012)
- Hotel Employees & Restaurant Employees Local 2 v. Vista Inn Management Co., 393 F. Supp. 2d 972, 977-78 (N.D. Cal. 2005)
- Fontenot v. Wells Fargo Bank, N.A., 198 Cal. App. 4th 256, 264-67 (Cal. Ct. App. 2011)
- Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006)
- Branch v. Tunnell, 14 F.3d 449, 453-54 (9th Cir. 1994)
- United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003)
- Sgro v. Danone Waters of North America, Inc., 532 F.3d 940, 942 n.1 (9th Cir. 2008)
- Oasis West Realty, LLC v. Goldman, 51 Cal. 4th 811, 821 (2011)
- Reichert v. General Insurance Co., 68 Cal. 2d 822, 830 (1968)
- Gruenberg v. Aetna Insurance Co., 9 Cal. 3d 566, 573 (1973)
- Comunale v. Traders & General Insurance Co., 50 Cal. 2d 654, 658 (1958)
- Egan v. Mutual of Omaha Insurance Co., 24 Cal. 3d 809, 818 (1979)
- Guz v. Bechtel National, Inc., 24 Cal. 4th 317, 327 (2000)
- Faria v. PNC Bank National Association, No. 2:23-cv-02023-DAD-CSK, 2024 WL 1623419, at *6 (E.D. Cal. Apr. 15, 2024)
- Carter v. Sables, LLC, No. 3:17-cv-00594-MMD-WGC, 2017 WL 6328157, at *4 (D. Nev. Dec. 11, 2017)
- Hatch v. Collins, 225 Cal. App. 3d 1104, 1111 (Cal. Ct. App. 1990)
- Garfinkle v. Superior Court, 21 Cal. 3d 268, 277 (1978)
- Susilo v. Wells Fargo Bank, N.A., 796 F. Supp. 2d 1177, 1189 (C.D. Cal. 2011)
- Olmstead v. ReconTrust Co., 852 F. Supp. 2d 1318, 1322 (D. Or. 2012)
- Wilson v. Hewlett-Packard Co., 668 F.3d 1136, 1140 (9th Cir. 2012)

- Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co., 20 Cal. 4th 163, 180 (1999)
- National Funding, Inc. v. Commercial Credit Counseling Services, 817 F. App'x 380, 383-84 (9th Cir. 2020)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)
