

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Martinez v. Specialized Loan Servicing, LLC

Martinez · No. 2:24-cv-1387 WBS AC · Decided April 30, 2025

OPINION

Martinez v. Specialized Loan Servicing, LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 ----oo0oo---- 11 12 No. 2:24-cv-1387 WBS AC

13 CHRISTOPHER MARTINEZ, an

individual, 14 Plaintiff, ORDER RE: MOTION TO DISMISS 15 v. 16

SPECIALIZED LOAN SERVICING, LLC,

17 a limited liability company;

SECURED FUNDING CORP., a

18 corporation; and DOES 1-50, inclusive, 19 Defendants. 20 21 ----oo0oo---- 22 Christopher
Martinez (“plaintiff”) brought this action 23 against Specialized Loan Servicing, LLC
 (“defendant”), alleging 24 that it wrongfully foreclosed on his residence at 7096 Ludlow 25 Dr.,
Roseville, CA 95747 (“the property”). (First Am. Compl. 26 (“FAC”) (Docket No. 22).)
Defendant now moves to dismiss. 27 (Docket No. 27.) 28 On January 23, 2001, plaintiff and his
wife purchased 1 the property via grant deed. (FAC ¶ 15.) On November 7, 2006, 2 plaintiff used
his equity in the property to obtain a home equity 3 line of credit from co-defendant Secured
Funding Corporation for 4 \$111,800.00.1 (Id. ¶ 16.) Defendant services this loan. (Id.) 5 On May
6, 2008, plaintiff filed for chapter 7 bankruptcy, which 6 was discharged on August 11, 2008. (Id.
¶¶ 17-18.) Plaintiff 7 believed the bankruptcy extinguished his loan obligations to 8 defendants.
(Id. ¶ 18.) Plaintiff stopped receiving monthly 9 statements on the loan for more than 15 years.
(Id.) 10 On June 22, 2023, a notice of default was recorded on 11 the property and stated that
plaintiff owed \$157,088 on the loan. 12 (Id. ¶ 20.) Between June 22, 2023, and July 26, 2023,
plaintiff 13 attempted to cure the default informally by contacting defendant. 14 (Id. ¶¶ 23-24.)
Defendant then offered to reinstate the loan for 15 \$159,596.47, which included about \$40,000 in
additional interest 16 payments, and it gave plaintiff a week to consider the offer. 17 (Id. ¶¶ 24-
25.) Despite attempting to refinance the loan, 18 plaintiff did not accept defendant’s offer. (Id. ¶¶
25-26.) On

19 January 31, 2024, a notice of sale was recorded on the property,

20 which precipitated this litigation. (Id. ¶ 27.) 21 Defendant moves to dismiss on the ground that plaintiff 22 “fails to state a claim upon which relief can be granted.” See 23 Fed. R. Civ. P. 12(b) (6) (cleaned up).² Plaintiff brings seven 24 1 Co-defendant Secured Funding Corporation has not yet 25 appeared in the matter. 26 2 Defendant also moves to dismiss on the ground that 27 plaintiff failed to join an indispensable party under Federal Rules of Civil Procedure 12(b)(7) and 19(a)-(b). (See Docket

28 No. 27-1 at 16.) The court need not reach the issue here, and it

1 claims against defendant for: (1) violation of the federal Truth 2 in Lending Act, 15 U.S.C. § 1637; (2) breach of contract on a 3 third-party beneficiary theory; (3) breach of the implied 4 covenant of good faith and fair dealing; (4) violation of the 5 Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 6 §§ 1692e(A), 1692f(1); (5) violation of California Civil Code 7 section 2924.17; (6) violation of the Unfair Competition Law 8 (“UCL”), Cal. Bus. & Prof. Code § 17200; and (7) declaratory 9 relief. (See FAC ¶¶ 31-75.) 10 Plaintiff concedes that the first, second, third, 11 fifth, and seventh claims should be dismissed and requests leave 12 to amend. (See Docket No. 29 at 8-12.) Accordingly, those 13 claims will be dismissed.³ 14 Plaintiff argues that the fourth claim should not be 15 dismissed because the FDCPA applies to defendant. (See Docket

16 No. 29 at 12-13.) To support his position, plaintiff cites

17 several cases which are no longer good law. See, e.g., *Natividad* 18 v. Wells Fargo Bank, N.A., No. 3:12-cv-03646, 2013 WL 2299601, at 19 *3-11 (N.D. Cal. May 24, 2013), abrogated by *Obduskey v. McCarthy* 20 & *Holthus LLP*, 586 U.S. 466, 474-79 (2019); *Distor v. U.S. Bank* 21 NA, No. C 09-02086, 2009 WL 3429700, at *3-5 (N.D. Cal. Oct. 22, 22 2009), overruled by *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 23 24 expresses no opinion on whether all indispensable parties have been joined. 25 26 3 The court notes that declaratory relief is a remedy, not an independent claim, under California law. See *A.B. 27 Concrete Coating Inc. v. Wells Fargo Bank, Nat’l Ass’n*, 491 F. Supp. 3d 727, 737-38 (E.D. Cal. 2020) (Brennan, J.) (citing *Hood* 28 v. Superior Ct., 33 Cal. App. 4th 319, 323-24 (2d Dist. 1995)). 1 1180-81 & n.5 (9th Cir. 2016). The issue with plaintiff’s 2 authorities is that they do not account for the Supreme Court’s 3 holding in *Obduskey* that non-judicial foreclosure does not fall 4 within the ambit of the FDCPA. See 586 U.S. at 474-79. 5 Subsequently, the Ninth Circuit made it clear that “the 6 enforcement of a security interest does not entail an attempt to 7 collect money from the debtor.” *Barnes v. Routh Crabtree Olsen* 8 PC, 963 F.3d 993, 997-98 (9th Cir. 2020) (citing *Obduskey*, 586 9 U.S. at 474-79). Thus, the FDCPA does not apply to the 10 foreclosure at issue here, and the fourth claim will be 11 dismissed. 12 Plaintiff’s counsel argued in conclusory fashion that 13 the fourth claim should not be dismissed on the ground that 14 defendant’s reinstatement offer under California Civil Code 15 section 2924c is still actionable pursuant to § 1692f(1) of the 16 FDCPA even after *Obduskey*.⁴ (See also FAC ¶¶ 24-25, 51-53 17 (alleging reinstatement offer violates the FDCPA).) Plaintiff 18 has not provided, nor is the court aware of, any authority 19 indicating that defendant

making such a reinstatement offer, much 20 less at plaintiff's own behest, violates any part of the FDCPA. 21 Plaintiff's sixth claim alleges defendant violated the 22 UCL, which "proscribes the use of any 'unlawful, unfair or 23 fraudulent business act or practice.'" Beaver, 816 F.3d at 1177-24 4 The Court in Obduskey only excepted from its holding 25 one isolated subsection of the FDCPA: § 1692f(6), which uses a unique definition of "debt collector" distinct from the 26 definition applicable to § 1692f(1). See 586 U.S. at 468-69, 27 473-79. As a result, Obduskey and the Ninth Circuit's subsequent decision in Barnes still apply to plaintiff's fourth claim 28 regarding defendant's reinstatement offer. 1 78 (quoting Cal. Bus. & Prof. Code § 17200). A claim arising 2 under the UCL requires "that plaintiffs suffered an economic 3 injury and that the alleged injury was a result of the 4 violations." Shupe v. Nationstar Mortg. LLC, 231 F. Supp. 3d 5 597, 605-06 (E.D. Cal. 2017) (England, J.) (cleaned up) (citing 6 Kwikset Corp. v. Superior Ct., 51 Cal. 4th 310, 321-22 (2011)). 7 In Shupe, this court dismissed a UCL plaintiff's claim for lack 8 of statutory standing where the complaint did not allege that a 9 nonjudicial foreclosure sale was still pending. See id. Here, 10 plaintiff gives no indication that the foreclosure sale is still 11 pending or that his house has been sold yet. (See FAC ¶¶ 13-20, 12 23-27, 64-70.) Plaintiff has therefore not alleged a cognizable 13 economic injury under the UCL. 14 Even if plaintiff had established statutory standing, 15 he still fails to state a violation of the UCL. Plaintiff 16 alleges that defendant violated the "unfair" and "unlawful" 17 prongs of the UCL. (Id. ¶¶ 65-67.) The "unlawful" prong 18 "borrows violations of other laws and treats them as unlawful 19 practices that the unfair competition law makes independently 20 actionable." Beaver, 816 F.3d at 1177-78. Because each of 21 plaintiff's other claims will be dismissed, the UCL fails to the 22 extent it is asserted under the "unlawful" prong. Moreover, 23 plaintiff provides no authority indicating that he states a claim 24 under the UCL's "unfair" prong. (See Docket No. 29 at 14-15.) 25 Accordingly, the sixth claim will be dismissed. 26 Federal Rule of Civil Procedure 15(a)(2) directs the 27 court to "freely give leave [to amend the complaint] when justice 28 so requires." Fed. R. Civ. P. 15(a)(2). "[T]his policy is to be

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1 applied with extreme liberality." Herring Networks, Inc. v. 2 Maddow, 8 F.4th 1148, 1160-61 (9th Cir. 2021). Accordingly, the 3 court will give plaintiff leave to amend his complaint. 4 IT IS THEREFORE ORDERED that defendant's motion to 5 dismiss (Docket No. 27) be, and the same hereby is, GRANTED. 6 Plaintiff has twenty-one (21) days from the date of this Order to 7 file an amended complaint, if he can do so consistent with this 8 | Order. dh ble (hi. 9 | Dated: April 30, 2025 Pi he Vi (eh

10 UNITED STATES DISTRICT JUDGE

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