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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

FREMONT INVESTMENT & LOAN,

Plaintiff and Respondent,

v.

GARY HUNT et al.,

Defendants and Appellants.

E055623

(Super.Ct.No. RIC470124)

OPINION

APPEAL from the Superior Court of Riverside County. Lawrence W. Fry, Judge.
(Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to
art. VI, § 6 of the Cal. Const.) Affirmed.

Edward M. Murphy II for Defendants and Appellants.

Marcus, Watanabe & Dave and David M. Marcus for Plaintiff and Respondent.

Ready Products Corporation and Gary Hunt, defendants and appellants (hereafter referred to collectively as defendants or individually by name), appeal from the judgment entered against them and in favor of plaintiff and respondent, Fremont Investment &

Loan (plaintiff), on its complaint for, among other things, declaratory relief, cancellation of documents, and reconveyance of title. Plaintiff filed its lawsuit after defendants initiated nonjudicial foreclosure proceedings on real property on which plaintiff then held a first deed of trust securing a note in the amount of \$450,000 executed by Joe and Karen Ivy, as trustors. The Ivys executed that promissory note in January 2007 as part of plaintiff providing them with a new loan on their residence. Defendants claimed to be the beneficiaries on a promissory note executed by Joe Ivy on June 27, 2006, for \$70,000 secured by a third deed of trust on the Ivys' residential real property. Allied Corporation (ACI), the original beneficiary on the \$70,000 note, assigned its interest to defendants on July 3, 2006, concurrent with the close of escrow on the Ivy loan.

In the course of funding the January 2007 loan for \$450,000, plaintiff paid off the \$70,000 note secured by the third deed of trust in response to a beneficiary payoff demand submitted to escrow by ACI on January 5, 2007. Escrow closed on plaintiff's loan to the Ivys on January 18, 2007. That same day, defendant Hunt notified the Ivys by telephone that defendants held the note for \$70,000 secured by the third deed of trust on their property, and that defendants had not received payments for the months of December 2006 and January 2007. As a result of that nonpayment, Hunt said defendants intended to foreclose. The Ivys told Hunt they had paid off the \$70,000 note in the course of refinancing the property with plaintiff, and escrow on that refinancing had just closed.

Hunt submitted a beneficiary statement on January 22, 2007, to the escrow company that had handled plaintiff's loan to the Ivys, even though Hunt knew that

escrow had closed when the loan funded. On January 29, 2007, Hunt for the first time informed the Ivys in writing that ACI had assigned its interest in the \$70,000 note and trust deed to defendants on July 5, 2006. On February 26, 2007, defendant recorded a notice of default and election to sell under the deed of trust.

Plaintiff filed the lawsuit that is the subject of this appeal to prevent defendants from proceeding with foreclosure. In an earlier appeal (case No. E044050) we reversed an order granting a preliminary injunction to prevent the foreclosure sale. On remand, plaintiff paid defendants part of the money defendants demanded as pay off on the Ivy note. The parties also agreed defendants would repay that money if they lost at trial. If defendants prevailed, plaintiff agreed to pay the balance due on the note.

In a court trial, plaintiff presented evidence to support its theories that its payment to ACI discharged the debt on the \$70,000 note because (1) ACI was the named beneficiary on the note and defendants had not given notice under Civil Code sections 2935 and 2937 that ACI had assigned the note to them; (2) ACI and its principal, Anthony Veltre, were the actual agents of defendants in securing and servicing the \$70,000 loan to Ivy, and therefore in obtaining the payoff; and (3) if not the actual agent, ACI and Veltre were the ostensible agent of defendants.

At the conclusion of the four-day trial, both sides requested statements of decision. The trial court adopted the proposed statement of decision prepared by plaintiff, and filed on September 12, 2011, finding in favor of plaintiff on each theory asserted at trial. The trial court entered judgment in favor of plaintiff and against defendants on November 23, 2011. Defendants appeal from that judgment.

DISCUSSION

Defendants purport to raise numerous issues, none of which are actually relevant to our resolution of this appeal.¹ The dispositive question is whether substantial evidence supports the trial court’s finding that ACI acted as defendants’ agent in procuring and servicing defendants’ \$70,000 loan to Joe Ivy. (*Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 965 [“The existence of an agency relationship is a factual question for the trier of fact, whose determination must be affirmed on appeal if supported by substantial evidence”].) “Substantial evidence is not any evidence—it must be reasonable in nature, credible, and of solid value.” (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 51.)

An agent, according to Civil Code section 2295, is “one who represents another, called the principal, in dealings with third persons.” Defendants do not actually dispute the assertion ACI was its agent. Instead, they contend an agent’s authority to receive payments does not carry with it the authority to collect the principal. Defendants cite *Hagen v. Silva* (1956) 139 Cal.App.2d 199 (*Hagen*) as authority for this assertion.

¹ For example, defendants cite 32 purported issues in their opening brief, all of which correspond to issues defendants asked the trial court to address in the statement of decision. Although defendants pose the issues, they do not actually discuss them. “[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]” (*People v. Stanley* (1995) 10 Cal.4th 764, 793, citing 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 479, p. 469; *People v. Ashmus* (1991) 54 Cal.3d 932, 985, fn. 15; and *Duncan v. Ramish* (1904) 142 Cal. 686, 689-690.) Because defendants have not discussed the issues, they have not demonstrated error.

Hagen states, “[A]n agent’s authority to collect interest does not, *in itself*, carry with it authority to collect principal. [Citation.]” (*Hagen, supra*, 139 Cal.App.2d at p. 204, italics added.) “In California, this rule has found expression in the case of *Schomaker v. Petersen* [(1930)] 103 Cal.App. 558 . . . which holds that authority to collect interest does not establish agency to collect principal, nor does it give rise to an estoppel. It is true that in that case the purported agent had made but one authorized collection of interest, undertook to make a discount from the principal sum, and made the collection before maturity, but the decision is based not only on those facts, but also on the general proposition of law as stated above. [¶] *Circumstances added to the authority to collect interest may establish authority to collect principal.*” (*Hagen*, at p. 204, italics added.) In short, defendants are wrong in their claim that authority to collect interest does not also include the authority to collect the principal; it depends on whether there are additional circumstances from which that authority may be inferred.

The evidence at trial was sufficient to support the finding that ACI’s agency relationship with defendants extended to receiving payment of the principal. In particular, defendants had an eight-year relationship with ACI and its principle, Tony Veltre, over the course of which ACI found borrowers for approximately 100 loans in which defendant invested as the lender. Defendant Hunt testified, in pertinent part, that his business relationship with ACI began in 1998 when Hunt started investing in deeds of trust. Over the next eight years, until January 2007, Hunt through his company Ready

Products² invested in approximately 100 loans arranged by ACI. Hunt acknowledged that in July 2006, defendants loaned \$70,000 to Joe Ivy through ACI. In January 2007, Hunt learned Veltre had been obtaining and keeping payments and payoffs on defendants' loans, including the payoff on the Ivy loan. Although Hunt claimed the payments and payoff money should not have gone to ACI in the first place, Hunt also acknowledged Ivy had made all his loan payments to ACI, and ACI then paid defendants. Hunt also admitted he had other loans on which the trustor made all monthly payments to ACI, and 10 percent of the time ACI also collected the loan payoff for defendants.

When asked if he had given Joe Ivy notice of ACI's assignment of the loan to defendants, Hunt said he had, but he could only produce the notice sent in January 2007, after Ivy had refinanced and paid off defendants' loan. Joe Ivy's wife, Karen, testified, in pertinent part, that she was responsible for making the monthly payments on the loan in question. The loan documents identified ACI as the lender and therefore she made the first loan payment to ACI. Karen Ivy did not know before January 2007 that ACI had assigned the loan to defendants. She testified she made one payment to Ready Products at an address in Orange County, after Veltre directed her to do so and gave her the address. Veltre did not respond when Karen Ivy asked for documentation that Ready Products held the note, nor did Ready Products respond to the letter she sent asking for information. After sending the payment to Ready Products, Karen Ivy checked her bank account and determined the check had not been cashed. She contacted Veltre. Karen Ivy

² Hunt is the CEO of Ready Products.

made five more loan payments, all payable to ACI and mailed to ACI's address. ACI, in turn, paid some or all of that money to defendants.

The noted evidence supports the trial court's finding ACI was defendants' agent when it received the payoff on the Ivy loan. By paying the amount due on the note to defendants' agent, plaintiff satisfied the debt to defendants.

Defendants' final claim is that the so-called equal dignities rule applies in this case. The rule provides when a contract must be in writing to be effective, an agency relationship with respect to that contract must also be in writing. (Civ. Code., § 2309 ["An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing"].) The trial court found in its statement of decision that defendants were estopped from asserting the equal dignities rule. The evidence supports that finding.

"A principal is estopped to raise the equal dignities rule against a contracting third party if the principal, by its own conduct, lulls the third party into believing that its agent has written authority to enter the contract or has no need of written authority. [Citations.]" (*Kerner v. Hughes Tool Co.* (1976) 56 Cal.App.3d 924, 934.)

At the outset, we note defendants did not identify in the trial court and do not identify in this appeal the contract they contend was required to be in writing, and thus upon which the equal dignities rule depends. Assuming without actually deciding that some aspect of defendants' relationship with ACI was required to be in writing, the evidence supports the trial court's finding that defendants were estopped from denying the existence of an agency relationship. As set out above, defendants authorized ACI not

only to solicit lending opportunities on defendants' behalf, but also to appear as if ACI were the actual lender. Consistent with the representation that ACI was the lender, defendants also permitted ACI to collect loan payments and payoffs in its own name. This evidence is sufficient to support the trial court's finding that defendants are estopped from asserting the equal dignities rule against either the Ivys or plaintiff.

DISPOSITION

The judgment is affirmed.

Plaintiff to recover its costs on appeal.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

MILLER
J.