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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MOUFAK ALBASATENEH,

Plaintiff and Appellant,

v.

BANK OF AMERICA, N.A., et al.,

Defendants and Respondents.

G049354

(Super. Ct. No. 30-2012-00545798)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

Mouafak Albasateneh, in pro. per., for Plaintiff and Appellant.

Severson & Werson, Kerry Franich and Jan T. Chilton for Defendants and Respondents.

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Plaintiff Mouafak Albasateneh appeals from a judgment in favor of defendants Bank of America, N.A. (BofA) and Recontrust Company, N.A. (Recontrust) on plaintiff's complaint for violation of Civil Code section 2923.5 (all further statutory references are to this code unless otherwise stated), which requires a lender to discuss with the borrower options to avoid foreclosure before filing a notice of default. He argues defendants violated the statute by failing to negotiate a loan modification.

Section 2923.5 did not require defendants to modify the loan and plaintiff did not prove he was entitled to any other relief under the statute. Therefore, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

In 2007, plaintiff borrowed \$720,000 from Countrywide Home Loans, Inc., BofA's predecessor in interest, secured by a deed of trust on his residence. After plaintiff defaulted on his loan, Recontrust recorded a notice of default in October 2009 and recorded notices of sale in February 2010 and July 2011.

Plaintiff filed this action and, after two amendments and demurrers, the operative complaint contained one cause of action for violation of section 2923.5. During the pendency of the action the parties participated in three loan modification settlement conferences.

At a bench trial, after plaintiff rested, the court granted defendants' motion for judgment under Code of Civil Procedure section 631.8 and entered a judgment of dismissal.

Additional facts are set out in the discussion.

DISCUSSION

1. Motion for Judgment

In a court trial, after the plaintiff has presented his case in chief, a party may move for judgment on the ground the plaintiff has not met the burden of proof.

(Code Civ. Proc., § 631.8, subd. (a).)) In deciding the motion the judge weighs the evidence in the capacity as the trier of fact. (*Ibid.*)

We review a judgment rendered under Code of Civil Procedure section 631.8 using the substantial evidence standard. (*Fink v. Shemtov* (2012) 210 Cal.App.4th 599, 608.) Because neither party requested a statement of decision, we infer the trial court made all findings required to support the judgment and review the implied findings under this standard as well. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 61-62.) We presume the judgment is correct and view it in the light most favorable to the prevailing party. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957.)

2. Section 2923.5

Upon a borrower's default under a trust deed and before recording a notice of default, under section 2923.5, subdivision (a)(2) a lender is required to contact a borrower "to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." The gravamen of plaintiff's claim here is that defendants failed to do so and also failed to furnish him with a telephone number for a "housing counseling agency" as provided by the United States Department of Housing and Urban Development (HUD), also required by the statute. (*Ibid.*)

Plaintiff did not prove these allegations, however. He offered no evidence as to a HUD telephone number. As to the required exploration of options to avoid foreclosure, plaintiff's testimony was directly opposite to his claim. When the court inquired whether BofA had contacted plaintiff or made "an honest good-faith attempt to try and work out a loan modification . . . before they pressed forward with the foreclosure," plaintiff testified, "They [*sic*] did, your honor, in June [of 2013]." Further, the record reflects there were three loan modification settlement conferences after plaintiff filed suit.

Admittedly, this was done after the two notices of default were filed. But the only remedy available under section 2923.5 is postponement of the foreclosure sale until the lender complies with the statute. (*Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 223.) There is no evidence defendants foreclosed on the property prior to BofA's discussions with plaintiff.

Moreover, BofA actually offered plaintiff a loan modification. That plaintiff was unhappy with its terms is not relevant. Section 2923.5 does not require the lender to modify or even offer to modify a loan. (*Mabry v. Superior Court, supra*, 185 Cal.App.4th at p. 214.)

Plaintiff also argues that the court misunderstood one of the terms of the modification offer. Thus, he concludes, the court was unable to determine whether the offer was reasonable and in good faith. But because section 2923.5 does not require a lender to offer a modification, its reasonableness or good faith nature is outside the scope of the statute. Similarly, that the trial judge admittedly was not an expert in loan modifications does not bear on BofA's compliance with section 2923.5.

In sum, there was insufficient evidence to prove plaintiff's cause of action for violation of section 2923.5, and the court properly granted the motion for judgment.

3. Miscellaneous Arguments

In the introduction to his brief, plaintiff stated his argument "stem[med] from two basic issues," one of which was BofA's acquisition of his loan from another lender and initiation of foreclosure proceedings "without assigning or naming a beneficiary under their securitized instruments." This is the only reference to this issue. If plaintiff intended to make this argument as part of his appeal, it is forfeited for failure to discuss it under a discrete heading and to provide reasoned legal argument and supporting authority. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) The same is true for any other arguments on which plaintiff may be relying.

DISPOSITION

The judgment is affirmed. Defendants are entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.