JPMorgan Chase Bank, N.A. v. Kelley, et al.
Case No.: 17CV312147

I. Background

This is a post-foreclosure unlawful detainer action filed by plaintiff JPMorgan Chase, National Association ("Plaintiff") against defendant James Kelley ("Defendant"). As alleged in the Complaint, Plaintiff acquired property located at 14390 Douglass Lane, Saratoga, CA 95050 ("Property") at a trustee's sale. (Complaint, ¶¶ 1, 5.) The foreclosure was conducted in compliance with Civil Code section 2924 et seq. ("Section 2924") under the power of sale in a deed of trust ("DOT") executed by Defendant. (Id. at ¶ 5.) Plaintiff duly perfected its title under the sale by recording a trustee's deed upon sale with the Santa Clara County Recorder's Office. (Id.) On June 14, 2017, Plaintiff served Defendant with a three-day written notice to quit. (Id. at ¶ 6.) Defendant failed to vacate the Property within the designated three-day period and continues to be in possession of the Property. (Id. at ¶¶ 4, 7.) Plaintiff therefore seeks possession of the Property pursuant to Code of Civil Procedure section 1161a.

Currently before the Court is Defendant's demurrer to the Complaint, which Plaintiff opposes. Both parties also filed requests for judicial notice.

II. Requests for Judicial Notice

A. Defendant's Request for Judicial Notice

Defendant seeks judicial notice of the DOT between him and Washington Mutual Bank, F.A. ("WaMu") pursuant to Evidence Code section 452 ("Section 452"). Though he does not cite the specific subdivision of Section 452 on which his request is based, recorded documents are judicially noticeable under subdivision (h) as facts that are "not reasonably subject to dispute and capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Fontenot v. Wells Fargo Bank, N.A. (2011) 198 Cal.App.4th 256, 264-265, disapproved of on other grounds in Yvanova v. New Century Mortg. Corp. (2016) 62 Cal.4th 919.) Furthermore, the DOT is relevant to the issue raised on demurrer. (See People ex rel. Lockyer v. Shamrock Foods Co. (2000) 24 Cal.4th 415, 422, fn. 2 [a precondition to taking judicial notice is that the matter to be noticed is relevant to an issue in the case].) As such, it is a proper subject of judicial notice.

Accordingly, Defendant's request for judicial notice is GRANTED.

B. Plaintiff's Request for Judicial Notice

Plaintiff seeks judicial notice of documents recorded in connection with the foreclosure on the Property (the DOT, substitution of trustee, notice of default, notice of trustee's sale and trustee's deed upon sale); the Purchase and Assumption Agreement between the Federal Deposit Insurance Corporation ("FDIC") and itself ("PAA"); and three court decisions and a judgment rendered in Defendant's prior bankruptcy proceedings. Its request is made pursuant to Evidence Code sections 451, 452 and 453. Defendant opposes the request in part, arguing the PAA cannot be judicially noticed for the purpose of establishing his loan was acquired by Plaintiff through the agreement, and the recorded documents, apart from the DOT, and court records cannot be noticed for the truth of the matters stated therein.

As a preliminary matter, though court records are judicially noticeable under subdivision (d) of Section 452, the documents from Defendant's prior bankruptcy proceedings are not relevant, helpful or necessary to resolving the issue raised on demurrer. (See Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison (1998) 18 Cal.4th 739, 748, fn. 6 [a court need not take judicial notice of a matter unless it "is necessary, helpful, or relevant"].) As such, the Court declines to take judicial notice of them. The PAA and the recorded documents, on the other hand, are relevant and will therefore be addressed below.

1. Purchase and Assumption Agreement

Plaintiff seeks judicial notice of the PAA for the purpose of demonstrating that, in 2008, WaMu's assets were transferred to Chase through the FDIC. Defendant acknowledges that at least one court has upheld judicial notice of the PAA to establish the FDIC's official act of seizing WaMu's assets and transferring them to Chase. (See Scott v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 743 ("Scott") [holding the PAA is a proper subject of judicial notice under Section 452, subdivision (c), which provides the court may take judicial notice of official acts of the executive branch].) However, he opposes the request to the extent Plaintiff seeks to use the PAA as evidence it acquired his specific loan through the agreement, citing Jolley v. Chase Home Fin., LLC (2013) 213 Cal.App.4th 872 ("Jolley") in support.

In Jolley, the court held the PAA could not be judicially noticed for the purpose for which the trial court used it – namely, to conclude that under the terms of the PAA, Chase did not assume liability for the plaintiff's claims. (213 Cal.App.4th at 889.) Because that fact and the contents of the PAA were not reasonably beyond dispute, the court concluded the trial court's judicial notice of the PAA was improper. (Id. at 889-90.)

Based on the Jolley decision, Defendant argues the PAA cannot be judicially noticed to establish the fact his loan was acquired by Plaintiff through the PAA because this is a fact that is in dispute.

Though Defendant is correct that the presence of his loan among the acquired WaMu assets is not a fact that is reasonably beyond dispute, his argument is otherwise misplaced because, here, Plaintiff does not appear to be seeking judicial notice of the PAA to establish that fact. Rather, Plaintiff references the PAA only in the context of its general statement that Chase acquired WaMu assets in 2008. Under Scott, the Court is permitted to judicially notice the PAA for the purpose of establishing that such a transfer of assets between WaMu and Chase occurred. (See Scott, supra, 214 Cal.App.4th at 753.)

2. Recorded Documents

With respect to the recorded documents, as already discussed, they are judicially noticeable under Section 452, subdivision (h). (See Fontenot, supra, 198 Cal.App.4th at 264-265.) While Defendant is correct in his assertion that judicial notice cannot be taken of the truth of the matters stated in such records, judicial notice is permissible to establish the parties, dates, and legal consequences of the recorded documents. (See Id. at 265; Poseidon Dev., Inc. v. Woodland Lane Estates, LLC (2007) 152 Cal.App.4th 1106, 1117-18; see also, e.g., Hamilton v. Greenwich Inv'rs XXVI, LLC (2011) 195 Cal.App.4th 1602, 1608, fn. 3 [judicial notice can be taken of the fact that documents say what they say].) As such, the Court will take judicial notice of the recorded documents.

3. Conclusion

For the reasons stated, Plaintiff's request for judicial notice is GRANTED as to the PAA and recorded documents and DENIED as to the court records.

III. Demurrer

Defendant demurs to the Complaint in its entirety. The demurrer is on the ground of failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) Defendant argues no claim for unlawful detainer has been stated because the foreclosure of the Property was not initiated by the correct beneficiary or conducted by the correct trustee under the DOT.

Under Section 2924, subdivision (a)(6), no entity shall initiate the foreclosure process unless it is the "holder of the beneficial interest under the mortgage or deed of trust, the original trustee or the substituted trustee under the deed of trust, or the designated agent of the holder of the beneficial interest." If a sale has not been conducted in compliance with Section 2924 et seq. or title under such sale has not been duly perfected, there can be no action for unlawful detainer. (Evans v. Superior Court (1977) 67 Cal.App.3d 162, 169.)

In support of Defendant's contention the foreclosure was initiated and conducted by the wrong parties, he relies on the DOT that has been judicially noticed. The DOT lists WaMu as the beneficiary and California Reconveyance Company ("CRC") as the trustee. Defendant then compares the DOT to the trustee's deed of sale ("TDUS") attached to the Complaint, which identifies Plaintiff as the foreclosing beneficiary and Quality Loan Service Corporation ("QLS") as the foreclosing trustee. Based on this purported discrepancy between the listed beneficiaries and trustees in the DOT and TDUS, Defendant argues the foreclosure was initiated and conducted by the wrong parties and the subsequent notice to quit Plaintiff served on him was therefore defective.

Here, as a preliminary matter, the Court questions the propriety of Defendant's approach in attempting to manufacture a contradiction between the DOT – the sole document he submitted for judicial notice – and the allegations in the Complaint. While judicial notice can be utilized to establish facts that contradict the allegations of a pleading (see Groves v. Peterson (2002) 100 Cal.App.4th 659, 667), Defendant's selective use of judicial notice to create a conflict is disingenuous. As Plaintiff points out in its opposition, Defendant clearly omits from his request other documents relevant to the chain of title in this case, including the substitution of QLS for CRC as trustee, despite the fact he is almost certainly aware of them.

In any event, Plaintiff submitted the "missing" documents that fill in the purported gaps in the chain of title, which the Court judicially noticed. Based on these documents, it quickly becomes apparent the argument the DOT and TDUS establish foreclosure by the wrong parties is flawed.

The Court is also not persuaded by Defendant's argument the Complaint fails to state a cause of action because Plaintiff fails to affirmatively allege each supporting fact that demonstrates proper foreclosure by the correct parties and compliance with Section 2924 in the conduct of the sale. Defendant cites no authority supporting the proposition this type of specificity is required to state an unlawful detainer claim. (See Cal. Rules of Court, rule 3.1113(b) [supporting memorandum must include a discussion of legal authority in support of the position advanced].) The Complaint alleges the Property was sold to Plaintiff in accordance with Section 2924, under the power of sale contained in the DOT executed by Defendant, the title was duly perfected, Plaintiff was entitled to possession, and a three-day written notice to quit was served on Defendant who continued in possession after the three days elapsed. (Complaint, ¶¶ 4-6.) Defendant has not pointed to and the Court is unaware of any authority stating more must be alleged. (See Code Civ. Proc., § 1161a, subd. (b)(3); see, e.g., Johnson v. Hapke (1960) 183 Cal.App.2d 255, 259.)

For the reasons stated, the demurrer to the Complaint on the ground of failure to state facts sufficient to constitute a cause of action is OVERRULED.