

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN VODONICK,

Plaintiff,

v.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, INC., a
federally chartered
corporation, all persons
claiming any right, title or
interest in certain real
property; and DOES 1 through
50, inclusive,

Defendants.

No. 2:15-cv-00539-JAM-EFB

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Defendant Federal National Mortgage Association ("Fannie Mae") moves for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) on two of the three requested declarations of the first claim for relief and the third, fourth and fifth claims for relief in Plaintiff John Vodonick's ("Vodonick") First Amended Complaint ("FAC"). This motion was opposed by Vodonick. For the reasons set forth below, the Court

1 grants in part and denies in part, Fannie Mae's motion.¹

2
3 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

4 According to the allegations in the FAC:

5 Vodonick owns and resides in real property known as 15240
6 Willow Ridge Court in Nevada City, California ("Vodonick
7 Property"). FAC ¶ 3. The Vodonick Property neighbors a property
8 located at 15230 Willow Ridge Court in Nevada City, California
9 ("Neighboring Property"). Id. ¶ 4. Both properties were once a
10 single parcel that bordered Mosquito Creek, a tributary of Deer
11 Creek. Id. ¶ 7. The single parcel was divided into five parcels
12 at some point immediately prior to October 29, 1987, which is
13 when Vodonick acquired title by deed to the Vodonick Property.
14 Id. ¶ 9.

15 On July 12, 1988, Vodonick received an easement over the
16 Neighboring Property from the then-owners of the Neighboring
17 Property, Tim R. Smith and Peggy A. Smith ("The Smiths"), in
18 order to access Mosquito Creek. Id., Exh. 2. The scope of the
19 easement was clarified in an easement deed entered into between
20 Vodonick and the Smiths on September 22, 1988 and recorded on
21 September 27, 1988. Id., Exh. 1. Since this time, Vodonick has
22 continuously exercised his rights in the easement and has paid
23 all property taxes separately assessed upon the easement. Id. ¶¶
24 12-13.

25 The Smiths conveyed the Neighboring Property to Ronald B.
26 Claridge and Michelle J. Claridge ("The Claridges") by a grant

27 _____
28 ¹ This motion was determined to be suitable for decision without
oral argument. E.D. Cal. L.R. 230(g).

1 deed that was recorded on September 27, 1988. Request for
2 Judicial Notice ("RJN"), Exh. 1. The grant deed reserved "an
3 easement for access and recreation over the easterly five
4 feet . . . and the Norhterly 50 feet." Id. The Trustee of
5 Ronald B. Claridge then transferred the Neighboring Property to
6 Robert D. Story and Stephanie L. Story ("The Storys") by a grant
7 deed that was recorded on December 3, 1997. RJN, Exh. 2.

8 A promissory note related to Neighboring Property was
9 assigned to Fannie Mae and declared to be in default on or around
10 August 1, 2014. FAC ¶ 15; Id., Exh. 3. Fannie Mae issued a
11 notice on October 31, 2014, that the Neighboring Property would
12 be sold at a public foreclosure auction on November 26, 2014 at
13 12:30 p.m. Id. ¶ 17; Id., Exh. 4. Vodonick was interested in
14 acquiring the Neighboring Property and dispatched an agent to the
15 auction. Id. ¶¶ 18-19. But the auction did not take place and
16 no party announced a continuance of the sale. Id. ¶ 19.

17 Instead, the Neighboring Property was apparently sold at a public
18 auction on or about December 1, 2014. Id. ¶ 20. Vodonick never
19 received notice of this postponed foreclosure sale and alleges
20 that he would have attended and made a good faith bid on the
21 property. Id. On December 2, 2014, First American Title
22 Insurance Company, acting as Trustee of Neighboring Property for
23 the foreclosure sale, conveyed the Neighboring Property to Fannie
24 Mae. Id. ¶ 21; Id., Exh. 5.

25 Vodonick asserts five claims for relief in his FAC. The
26 first claim for relief seeks declarations that (1) the purported
27 deed to Fannie Mae is "null, void and of no effect," (2) Vodonick
28 is vested in title and interest to the easement, and (3) Vodonick

1 is vested in fee title to the portion of the Neighboring Property
2 that contains the easement. Id. at 7. The second claim for
3 relief seeks to quiet title to the easement by implication,
4 pursuant to California Code of Civil Procedure section 760.020.
5 Id. at 7-8. The third claim for relief seeks to quiet title to
6 an agreed boundary line for the easement. Id. at 8. The fourth
7 claim for relief seeks to quiet title by a prescriptive easement.
8 Id. at 8-9. And the fifth claim for relief seeks title to the
9 easement by adverse possession. Id. at 9.

11 II. OPINION

12 A. Legal Standard

13 Federal Rule of Civil Procedure ("Rule") 12(c), states that
14 "[a]fter the pleadings are closed—but early enough not to delay
15 trial—a party may move for judgment on the pleadings." For the
16 purposes of Rule 12(c), the pleadings are closed once an answer
17 has been filed. Doe v. United States, 419 F.3d 1058, 1061 (9th
18 Cir. 2005). Since Fannie Mae has filed its answer and the
19 motion will not delay trial, a Rule 12(c) motion is appropriate
20 at this time.

21 Rule 12(c) motions are "functionally identical" to Rule
22 12(b) motions. Dworkin v. Hustler Magazine Inc., 867 F.2d 1188,
23 1192 (9th Cir. 1989). "Judgment on the pleadings is proper when
24 the moving party clearly establishes on the face of the
25 pleadings that no material issue of fact remains to be resolved
26 and that it is entitled to judgment as a matter of law." Hal
27 Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550
28 (9th Cir. 1989). Just as in Rule 12(b) motions to dismiss,

1 courts must accept as true the allegations of the non-moving
2 party. Id.

3 B. Judicial Notice

4 Vodonick seeks judicial notice pursuant to Federal Rule of
5 Evidence 201 of the following two documents: (1) a deed from the
6 Smiths to the Claridges recorded on September 27, 1988 (RJN,
7 Exh. 1), and (2) a deed from the Trustee of the Trust of Ronald
8 B. Claridge to the Storys dated December 1, 1997 and recorded on
9 December 3, 1997 (RJN, Exh. 2).

10 A court may take judicial notice of a fact that is not
11 reasonably disputed if it "can be accurately and readily
12 determined from sources whose accuracy cannot reasonably be
13 questioned." Fed. R. Evid. 201(b)(2). On a motion to dismiss,
14 courts are allowed to consider "matters of public record."
15 Northstar Fin. Advisors Inc. v. Schwab Investments, 779 F.3d
16 1036, 1042 (9th Cir. 2015) (quoting Coto Settlement v.
17 Eisenberg, 593 F.3d 1031, 1038 (9th Cir. 2010)).

18 The documents submitted by Vodonick are in the public
19 record and are not subject to reasonable dispute, and Fannie Mae
20 has not objected to their judicial notice. As such, the Court
21 grants Vodonick's request for judicial notice of these two
22 documents. Nat. Mortgage Ass'n, 55 F. Supp. 3d 915, 927 (N.D.
23 Tex. 2014); Fed. Nat. Mortgage Ass'n v. Davis, 963 F. Supp. 2d
24 532, 543 (E.D. Va. 2013).

25 ///

26 ///

27 ///

28 ///

1 C. Analysis

2 1. Declaratory Relief

3 Fannie Mae first moves for judgment on the pleadings with
4 respect to two of the three declarations that Vodonick seeks on
5 his first claim for relief.

6 a. Declaration that Fannie Mae's Interest in
7 Neighboring Property is Null and Void.

8 First, Fannie Mae objects to Vodonick's claim for a
9 declaration that Fannie Mae's interest in the Neighboring
10 Property is null and void. Fannie Mae argues that Vodonick, as
11 an easement holder, was not entitled to personal notice of the
12 foreclosure sale on the Neighboring Property and thus has no
13 standing to make this challenge. Mot. at 3; Reply at 2. In
14 opposition, Vodonick argues that Fannie Mae's interest in the
15 Neighboring Property is null and void because the foreclosure
16 sale was fraudulently conducted prior to the delivery of the
17 trustee's deed. Opp. at 6. Specifically, Vodonick argues that
18 the postponement of the foreclosure sale failed to meet the
19 notice requirements of California Civil Code Sections ("Section")
20 2924f and 2924g(d). Id. at 6-7.

21 California has an extensive web of regulations that govern
22 the process for non-judicial foreclosure sales. Section 2924f
23 establishes the initial procedural notice requirements for a
24 foreclosure sale, while Section 2924g(d) establishes the notice
25 requirements for *postponed* foreclosure sales. Section 2924g(d)
26 explicitly states that 2924f regulations are only required for
27 postponed sales if the sale is postponed for more than 365 days.
28

1 Cal. Civ. Code § 2924g(c)(2). Vodonick alleges that the
2 foreclosure sale in this case was delayed by only one week. FAC
3 ¶¶ 17, 20. Thus, the procedural notice requirements imposed by
4 Section 2924f are irrelevant in this case. Fannie Mae was not
5 required to abide by any of the procedures found in Section 2924f
6 for its second foreclosure sale, and that sale cannot be rendered
7 null and void for any alleged violations of Section 2924f.

8 Though Section 2924f is inapplicable to this case, Section
9 2924g is directly on point. When a party postpones a foreclosure
10 sale,

11 "[t]he notice of each postponement and the reason
12 therefor shall be given by public declaration by the
13 trustee at the time and place last appointed for sale.
14 A public declaration of postponement shall also set
15 forth the new date, time, and place of sale and the
16 place of sale shall be the same place as originally
17 fixed by the trustee for the sale. No other notice of
18 postponement need be given."

19 Cal. Civ. Code § 2924g(d). Vodonick specifically alleges that
20 his agent "appeared at the time and place noticed for the public
21 auction . . . [but] the auction did not take place nor did anyone
22 announce a continuance of the auction date and time." FAC ¶ 19.
23 This allegation, taken as true for the purposes of this motion,
24 sufficiently demonstrates that Fannie Mae violated Section
25 2924g(d). The issue then becomes whether this alleged violation
26 renders the subsequent sale completely null and void.

27 Vodonick cites In re Kekauoha-Alisa, 674 F.3d 1083 (9th Cir.
28 2012), to support his claim that the failure to provide an oral
29 declaration of the postponement renders a subsequent sale void.
30 In In re Kekauoha-Alisa, the debtor sued the creditor for a
31 violation of Hawaii Revised Statute (HRS) section 667-5, which

1 authorizes the postponement of foreclosure sales "by public
2 announcement made by the mortgagee or by a person acting on the
3 mortgagee's behalf." In re Kekauoha-Alisa, 674 F.3d at 1086.
4 After finding that the mortgagee failed to make a proper
5 "announcement," the court concluded that Hawaiian law requires
6 that a violation of section 667-5, "whether . . . grievously
7 prejudicial or merely technical," voids a subsequent foreclosure
8 sale. Id. at 1089.

9 California does not follow Hawaii's lead on this issue. In
10 California, mere procedural violations of the foreclosure notice
11 requirements do not automatically render a subsequent sale void.
12 Instead, plaintiffs seeking to challenge a subsequent foreclosure
13 sale must demonstrate that the violation of a foreclosure notice
14 requirement actually prejudiced them. Knapp v. Doherty, 123
15 Cal.App.4th 76, 94-97 (2004); Lehner v. United States, 685 F.2d
16 1187, 1190-91 (9th Cir. 1982).

17 The Ninth Circuit rejected a claim almost identical to
18 Vodonick's claim in Benson v. Ocwen Loan Servicing, LLC, 562 F.
19 App'x 567 (9th Cir. 2014). Like Vodonick, Benson alleged that
20 the creditor wrongfully foreclosed on a property because it
21 failed to properly publicly announce the new sale date at the
22 originally scheduled auction. The court rejected this claim
23 because it found that Benson could not demonstrate that he was
24 prejudiced by the procedural failure. Specifically, the court
25 reasoned that Benson had received actual notice of the new sale
26 date and that Benson had "not adduced evidence that any failure
27 to make a public announcement deprived him of equity in the
28 property or prevented a qualified person from bidding on the

1 property at the auction." Benson, 562 F. App'x at 570.

2 Unlike the plaintiff in Benson, Vodonick has alleged enough
3 facts to demonstrate that he was prejudiced by the alleged
4 technical failure to properly announce the postponement of the
5 foreclosure sale. First, Vodonick alleges that he did not
6 receive notice and had no reasonable way to obtain notice, FAC ¶
7 20, and at this stage of the proceedings, the Court must take his
8 allegations as true. Second, Vodonick claims that he would have
9 attended and made a full credit bid if he had notice of the
10 subsequent sale. FAC ¶ 20. Though the failure to make the
11 announcement did not deprive Vodonick "of equity in the
12 property," it allegedly deprived him of the opportunity to bid on
13 the property. Benson, 562 F. App'x at 570. Since the Benson
14 rule permits a showing of prejudice either by the deprivation of
15 equity in a property or by the deprivation of an opportunity for
16 a qualified person to bid on the property, Vodonick has
17 sufficiently stated a claim that he was prejudiced by the
18 procedural failure. The Court therefore denies Fannie Mae's
19 motion for judgment on the pleadings with respect to Vodonick's
20 first claim for a declaration that Fannie Mae's interest in the
21 Neighboring Property is void.

22 b. Declaration that Vodonick is vested in fee
23 title and interest in Neighboring Property.

24 Fannie Mae also moves for judgment on the pleadings on
25 Vodonick's requested declaration that Vodonick is "vested in fee
26 title and interest" in the portion of the Neighboring Property
27 that is covered by his easement. FAC at 7. Fannie Mae argues
28 that "it is basic property law that an easement is not a

1 possessory interest in property." Mot. at 4. Fannie Mae further
2 argues that Vodonick cannot demonstrate fee simple title in the
3 Neighboring Property through adverse possession. Reply at 5.
4 Vodonick's opposition argues that he has received "title by
5 adverse possession." Opp. at 9.

6 First, Vodonick does not have a possessory interest in the
7 Neighboring Property due to his easement. "An easement is a
8 nonpossessory interest in the land of another . . . [that]
9 represents a limited privilege to use the land of another for the
10 benefit of the easement holder's land, but does not create an
11 interest in the land itself." Beyer v. Tahoe Sands Resort, 129
12 Cal.App.4th 1458, 1472 (2005) (quotations omitted). Thus,
13 Vodonick cannot be declared vested in fee title to the property
14 over which his easement runs due to his status as an easement
15 holder.

16 Second, Vodonick cannot be declared vested in fee title and
17 interest over the property over which his easement runs under a
18 theory of adverse possession. To properly establish a claim to
19 property by adverse possession, Vodonick would have to prove,
20 among other things, that his possession was "adverse and hostile
21 to the true owner." Mehdizadeh v. Mincer, 46 Cal.App.4th 1296,
22 1305 (1996). "'Adverse use' means only that the claimant's use
23 of the property was made without the explicit or implicit
24 permission of the landowner." Aaron v. Dunham, 137 Cal.App.4th
25 1244, 1252 (2006).

26 Vodonick has not alleged any hostility with respect to his
27 use of the Neighboring Property. Given that Vodonick's easement
28 over the Neighboring Property was validly and voluntarily

1 conveyed, his use of the Easement cannot be adverse. In fact,
2 Vodonick alleges that the grantors expressly intended to permit
3 Vodonick's use of the easement. FAC ¶ 11; Opp. at 9 ("[I]t was
4 the intention of Plaintiff and his Grantors that the Neighboring
5 Property continued to be used in this manner."). Thus, Vodonick
6 cannot be declared vested in fee title and interest in the actual
7 property over which his easement runs under a theory of adverse
8 possession.

9 As such, the court grants with prejudice Fannie Mae's motion
10 for judgment on the pleadings on Vodonick's first cause of action
11 insofar as it seeks a declaration that Vodonick is "vested in fee
12 title and interest" to the portion of the Neighboring Property
13 that is covered by his easement. FAC ¶ 24C. Eminence Capital,
14 LLC v. Aspeon Inc., 316 F.3d 1048, 1052 (9th Cir. 2003)
15 ("Dismissal with prejudice and without leave to amend is not
16 appropriate unless it is clear . . . that the complaint could not
17 be saved by amendment.").

18 2. Quiet Title to Agreed Boundary Line

19 Vodonick's third claim for relief alleges that "the boundary
20 line between the servient tenement as burden by Plaintiff's
21 easement was subject to mutual uncertainty and in dispute." FAC
22 ¶ 33. He then claims "Within twenty years last past the boundary
23 line was expressly and/or impliedly agreed to be located as
24 presently constituted on the ground." Id. Fannie Mae seeks
25 judgment on this claim because "it is completely unclear as to
26 what Vodonick seeks." Mot. at 5. Fannie Mae also argues that
27 Vodonick has failed to establish an actual controversy over the
28 exact boundary line between the Vodonick Property and the

1 Neighboring Property or the exact boundary line for the easement.
2 Id. In opposition, Vodonick asserts that he has "alleged facts
3 satisfying all of the substantive elements to establish the
4 boundary of the user by the agreed boundary line," citing to
5 paragraphs ten, eleven, and twelve of the FAC. Opp. at 10.

6 The elements necessary to establish title by agreed boundary
7 line include (1) uncertainty as to the true boundary line, (2) an
8 agreement between the coterminous owners fixing the location of
9 the line, and (3) acceptance and acquiescence in the line so
10 fixed for a period equal to the statute of limitations or under
11 such circumstances that substantial loss would be caused by a
12 change of its position. Fobbs v. Smith, 202 Cal.App.2d 209, 214,
13 20 Cal. Rptr. 545, 548 (1962).

14 A careful review of the FAC reveals that Vodonick has failed
15 to allege sufficient facts to support a plausible claim that
16 there is uncertainty as to the true boundary line. Paragraphs
17 ten and twelve of the FAC contain no allegations of a disputed
18 boundary line. Paragraph eleven of the FAC alleges that that it
19 was the intention of the grantor and Vodonick "that the boundary
20 and use of the deeded easement be determined by the course and
21 scope of the Plaintiff's use as aforesaid." FAC ¶ 11. But this
22 allegation does not establish uncertainty. And the claim that
23 the "easement was subject to mutual uncertainty and in dispute"
24 in paragraph thirty-three of the FAC is conclusory and
25 unsupported by any factual allegations. Bell Atlantic Corp. v.
26 Twombly, 550 U.S. 544, 555-56 (2007).

27 The Court therefore grants the motion for judgment on the
28 pleadings on the third claim for relief in the FAC with

1 prejudice.

2 3. Prescriptive Easement and Adverse Possession

3 Vodonick seeks to quiet title to the property over which the
4 easement runs under theories of adverse possession in the fourth
5 claim for relief and prescriptive easement in the fifth claim for
6 relief. FAC ¶¶ 34-37. Fannie Mae moves for judgment on the
7 pleadings on both of these claims, arguing that Vodonick has not
8 alleged and cannot demonstrate the hostility element that is
9 required under either theory. Mot. at 6-7. Vodonick, in
10 opposition, argues that he has "factually alleged all the
11 elements to establish an easement by prescription and title by
12 adverse possession." Opp. at 11.

13 "To establish the elements of a prescriptive easement, the
14 claimant must prove use of the property, for the statutory period
15 of five years, which use has been (1) open and notorious;
16 (2) continuous and uninterrupted; (3) hostile to the true owner;
17 and (4) under claim of right." Mehdizadeh, 46 Cal.App.4th at
18 1305. Similarly, to establish a claim over property by adverse
19 possession, Vodonick would have to prove, among other things,
20 that his possession was "adverse and hostile to the true owner."
21 Id.

22 As discussed above, Vodonick's easement over the Neighboring
23 Property was validly and voluntarily conveyed, so his use of the
24 easement has never been and cannot be adverse. Aaron, 137
25 Cal.App.4th at 1252 ("'Adverse use' means only that the
26 claimant's use of the property was made without the explicit or
27 implicit permission of the landowner."). As such the court
28 dismisses with prejudice Vodonick's fourth and fifth claims for

1 relief. Eminence Capital, 316 F.3d at 1052.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. ORDER

For the reasons set forth above, the Court GRANTS WITH PREJUDICE Fannie Mae's motion for judgment on the pleadings with respect to claims for relief three, four, five, and the part of the first claim for relief that seeks a declaration that Vodonick is vested in fee title and interest in the Neighboring Property. The Court DENIES Fannie Mae's motion for judgment on the pleadings with respect to the part of the first claim for relief that seeks a declaration that the purported deed to Fannie Mae is null and void.

IT IS SO ORDERED.

Dated: March 1, 2016



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE