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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 DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Federal National Mortgage Association ("Fannie Mae" or "Defendant") moves for summary adjudication on a portion of John Vodonick's ("Plaintiff") first claim for declaratory relief.¹

For the reasons set forth below, the Court denies the motion.²

¹ Although Defendant uses the term "summary judgment," the substance of the motion and the proposed order, ECF No. 28, demonstrate that Defendant only seeks judgment as to part A of Plaintiff's declaratory relief claim and not on Plaintiff's second claim related to his purported easement. Defendant contends this claim was dismissed, Reply at 6 (citing ECF No. 18 at 13-14), but nothing on the docket indicates that the Court has adjudicated the second claim for relief or part B of the declaratory relief claim.

² This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for March 21, 2016.

1 I. FACTUAL AND PROCEDURAL BACKGROUND

2 Plaintiff owns and resides at 15240 Willow Ridge Court in
3 Nevada City, California. Plaintiff's Response to Defendant's
4 Statements of Undisputed Material Facts ("SUF") at ¶ 1. In
5 August 2014, Fannie Mae was assigned the promissory note to the
6 neighboring property, which was declared to be in default. SUF
7 at ¶¶ 2, 3. In addition to being neighbors, Plaintiff alleges—
8 though Defendant disputes—that he has an easement over a portion
9 of the property. First Amended Complaint ("FAC") at ¶¶ 10-14;
10 Defendant's Response to Plaintiff's Statement of Disputed
11 Material Facts ("SDF") at ¶ 8. Fannie Mae posted a copy of the
12 notice of the foreclosure sale—to take place on November 26,
13 2014, at 12:30 p.m.—at the main entrance of the Nevada County,
14 California, Superior Courthouse. SUF at ¶ 4; SDF at ¶ 1; Request
15 for Judicial Notice ("RFJN"), ECF No. 27, Exh. 6.

16 Plaintiff was out of town on November 26, 2014, and
17 dispatched an agent, Michael Nudelman, to appear at the auction.
18 SUF at ¶ 6. Although the parties dispute whether or not Mr.
19 Nudelman could have made a valid bid on that day, the parties
20 appear to agree that he showed up for the scheduled sale. SUF at
21 ¶¶ 6-8; SDS at ¶ 4. Plaintiff instructed Mr. Nudelman to bid up
22 to the amount of Fannie Mae's lien, but to not get into a bidding
23 war with another bidder. SUF at ¶ 9. The parties dispute
24 whether or not someone appeared to cry the sale or continue the
25 sale to another date. SDS at ¶ 4. The actual sale took place on
26 a subsequent day. SDS at ¶ 7. According to the "Trustees Deed
27 Upon Sale," the property was sold "at public auction on
28 12/01/2014 at the place named in the Notice of Sale[.]" RFJN,

1 Exh. 8 at 2.

2 Plaintiff filed this action in March, 2015, and the Court
3 granted Defendant's Motion for Judgment on the Pleadings with
4 respect to claims three, four, and five, and part of the first
5 claim in March, 2016. ECF Nos. 1, 4, & 18. The Court denied
6 Defendant's motion with respect to the part of the first claim
7 seeking a declaration that the deed to Defendant is null and
8 void. ECF No. 18. For the surviving claims, Plaintiff first
9 seeks declarations that the purported deed is null, void, and of
10 no effect and that Plaintiff is vested in title and interest to
11 the easement. Second, Plaintiff seeks to quiet title to the
12 easement by implication. See FAC.

13 II. OPINION

14 A. Jurisdiction

15 The FAC states that the basis for this Court's jurisdiction
16 is federal question jurisdiction because Defendant's "charter
17 provides that it is empowered to sue and be sued, and to complain
18 and to defend, in any court of competent jurisdiction, State or
19 Federal." FAC at ¶ 1. Earlier this year, the U.S. Supreme Court
20 overruled the Ninth Circuit on this issue, holding that the sue-
21 and-be-sued clause in Defendant Fannie Mae's charter only permits
22 suit in a court already endowed with subject-matter jurisdiction
23 and is not an independent source of jurisdiction. Lightfoot v.
24 Cendant Mortg. Corp., 137 S.Ct. 553 (2017). The Court notified
25 the parties of the change and permitted the parties to brief this
26 issue. See Thunder Prop., Inc. v. Treadway, No. 3:15-cv-00141-
27 MMD-VPC, 2017 WL 899961 (D. Nev. Mar. 7, 2017) (relying on
28 Lightfoot in remanding a case to state court where removal was

1 based on the "sue-and-be-sued" clause in Fannie Mae's charter).
2 The parties submitted a joint response conceding that the Court
3 no longer has federal question jurisdiction over the case. ECF
4 No. 34. They argued, however, that the Court should retain the
5 case under diversity jurisdiction because the parties are diverse
6 and the property in dispute puts the amount in controversy over
7 the \$75,000 minimum.

8 The Court is satisfied that diversity jurisdiction applies
9 in this case. First, Plaintiff is a California citizen, FAC ¶ 3,
10 and Defendant is a citizen of the District of Columbia, 12 U.S.C.
11 § 1717(a)(2)(B). Second, Plaintiff's first cause of action seeks
12 a declaration that the deed to Defendant is null and void. Even
13 though the FAC does not allege damages, the parties provide
14 persuasive authority and evidence that the requirement is met in
15 this case. See RFJN, ECF No. 35, Exh. 1 (Trustees Deed Upon Sale
16 for the price of \$393,824.21); Cohn v. Petsmart, Inc., 281 F.3d
17 837, 840 (9th Cir. 2002) ("In actions seeking declaratory or
18 injunctive relief, it is well established that the amount in
19 controversy is measured by the value of the object of the
20 litigation.") (citation omitted); Hendricks v. Wells Fargo Bank,
21 N.A., No. CV-15-01299-MWF (JEMx), 2015 WL 1644028, at *5-6 (C.D.
22 Cal. Apr. 14, 2015) (finding that, in an action seeking to enjoin
23 the foreclosure sale, the value of the property was relevant to
24 determining the amount in controversy). The Court thus retains
25 the case.

26 B. Judicial Notice and Evidentiary Objections

27 Defendant seeks judicial notice of several documents, most
28 of which are not pertinent to the Court's ruling on this motion.

1 See RFJN, ECF No. 27. Among those documents, Defendant requests
2 notice of Defendant's Exhibit 6 (["Notice of Trustee's Sale"]
3 dated October 29, 2014, recorded on October 31, 2014, in the
4 official records of Nevada County as document number 20140021214)
5 and Exhibit 8 (["Trustee's Deed Upon Sale"] dated December 2,
6 2014, recorded in the official records of Nevada County on
7 December 8, 2014, as document number 20140023981). Defendant
8 again requests notice of the same "Trustee's Deed Upon Sale" in
9 support of its jurisdictional argument. RFJN, ECF No. 35, Exh.
10 1. Plaintiff does not raise any objections. These documents are
11 in the public record and not subject to reasonable dispute. See
12 Grant v. Aurora Loan Services, Inc., 736 F. Supp. 2d 1257, 1263-
13 64 (C.D. Cal. 2010). Thus, the Court grants Defendant's requests
14 as to these three documents.

15 As for evidentiary objections, Defendant objects to portions
16 of John Vodonick's Declaration, ECF No. 30-1, and portions of
17 Michael Nudelman's Declaration, ECF No. 30-2, due to
18 contradictions between the declarations and prior testimony or
19 statements. Reply at 7-9. Because the Court's ruling does not
20 turn on the declarations, the Court declines to rule on this
21 issue.

22 C. Legal Standard

23 Summary judgement is proper if the movant shows that there
24 is no genuine dispute as to any material fact and the movant is
25 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).
26 "A moving party without the ultimate burden of persuasion at
27 trial . . . has both the initial burden of production and the
28 ultimate burden of persuasion on a motion for summary judgment."

1 Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210
2 F.3d 1099, 1102 (9th Cir. 2000). "In order to carry its burden
3 of production, the moving party must either produce evidence
4 negating an essential element of the nonmoving party's claim or
5 defense or show that the nonmoving party does not have enough
6 evidence of an essential element to carry its ultimate burden of
7 persuasion at trial." Id. "In order to carry its ultimate
8 burden of persuasion on the motion, the moving party must
9 persuade the court that there is no genuine issue of material
10 fact." Id.

11 D. Analysis

12 Plaintiff seeks a declaration that Fannie Mae's deed to the
13 property is null, void, and of no effect due to procedural
14 defects in the notice of sale. Compl. at ¶¶ 20, 24. The general
15 presumption is that a foreclosure sale has been conducted
16 regularly and fairly. 6 Angels, Inc. v. Stuart-Wright Mortg.,
17 Inc., 85 Cal. App. 4th 1279, 1284 (2001). In order to challenge
18 the sale for failure to comply with procedural requirements,
19 there must be evidence that the failure caused prejudice to the
20 plaintiff. Id.; see Knapp v. Doherty, 123 Cal. App. 4th 76, 96
21 (2004) (finding that the premature mailing of the Sale Notice did
22 not render the sale subject to attack); Benson v. Ocwen Loan
23 Servicing, LLC, 562 Fed. Appx. 567, 570 (9th Cir. 2014)
24 (rejecting a wrongful foreclosure claim premised on defendant's
25 failure to announce the new sale date because the plaintiff
26 received actual notice of the new sale date and could not show
27 prejudice).

28 Defendant argues that Plaintiff was unable to tender payment

1 at the foreclosure sale scheduled for November 26, 2014. MSJ at
2 4-8; SUF at ¶¶ 7-10. Defendant contends that, due to this
3 inability, Plaintiff cannot show he was prejudiced by the alleged
4 procedural defect. Plaintiff argues that facts concerning his
5 ability to tender on November 26, 2014 (the advertised sale date)
6 are irrelevant because the sale did not occur on that date. Opp.
7 at 1-2.

8 The Court agrees with Plaintiff; Defendant misses the mark.
9 The alleged prejudicial procedural error was Defendant's failure
10 to announce the continuance of the foreclosure sale to a later
11 date, causing Plaintiff to be unable to make a bid at the actual
12 sale. Thus, the relevant question is whether Plaintiff could
13 have tendered payment on December 1, 2014. Plaintiff alleges he
14 would have attended and made a full credit bid. Compl. at ¶ 20.
15 Defendant produces no evidence that Plaintiff could not have done
16 so. Although neither party cites a factually analogous case,
17 none of the cited cases give the Court any reason to conclude
18 that the inquiry turns on the cancelled foreclosure sale rather
19 than the actual foreclosure sale. As Defendant's arguments in
20 favor of summary adjudication are premised on this theory, its
21 motion is denied.

22 In a final effort, Defendant asks for summary judgment
23 because declaratory relief is not appropriate where Plaintiff
24 seeks to redress past wrongs. Defendant did not make this
25 argument in its earlier motions on the pleadings. ECF Nos. 6 &
26 13.

27 In an action for declaratory relief, the Court must inquire
28 whether there is a case of actual controversy within its

1 jurisdiction. Am. States Ins. Co. v. Kearns, 15 F.3d 142, 143
2 (9th Cir. 1994). As Defendant argues, “[a] declaratory relief
3 claim operates ‘prospectively,’ not to redress past wrongs.”
4 Flores v. EMC Mortg. Co., 997 F. Supp. 2d 1088, 1111 (E.D. Cal.
5 2014) (citation omitted).

6 The only foreclosure sale case Defendant cites is
7 distinguishable from the present circumstances. In Flores v. EMC
8 Mortg. Co., the court dismissed a claim seeking a declaration
9 that the defendants were not authorized to foreclose on a
10 property after the defendants had already foreclosed on the
11 property. Id. at 1111-12. The court reasoned that the complaint
12 sought to redress past alleged wrongs, rather than prospective
13 wrongdoing, and, additionally, that the claim must fail given the
14 court’s dismissal of the plaintiff’s claims on identical issues.
15 Id. Here, however, the validity of the deed itself is in dispute
16 and Plaintiff seeks a declaration that it is null and void.
17 Thus, there appears to be a live controversy over the deed’s
18 status and the Court is not persuaded that the action is merely
19 backward looking.

20 III. ORDER

21 For the reasons set forth above, the Court DENIES
22 Defendant’s Motion for Summary Judgment.

23 IT IS SO ORDERED.

24 Dated: March 30, 2017

25 
26 JOHN A. MENDEZ,
27 UNITED STATES DISTRICT JUDGE
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