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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CITIFINANCIAL MORTGAGE
COMPANY et al.,

Plaintiffs and Appellants,

v.

MISSIONARY FOUNDATION, INC. et
al.,

Defendants and Respondents.

B178664

(Los Angeles County
Super. Ct. No. BC 291448)

APPEAL from a judgment of the Superior Court of Los Angeles County. Joanne O'Donnell, Judge. Affirmed.

Alborg, Veiluva & Epstein, Michael J. Veiluva and Annie G. Horton for Plaintiff and Appellant Citifinancial Mortgage Company.

Marcus, Watanabe, Snyder & Dave, Patricia M. Snyder and Daniel J. Enowitz, for Defendant and Respondent Jaime Sanchez.

Calabro Law Offices and Alfred A. Calabro for Defendant and Respondent Missionary Foundation, Inc.

Plaintiff Citifinancial Mortgage Company (Citifinancial) appeals summary judgment granted in favor of defendants Missionary Foundation, Inc. (Missionary) and Jaime Sanchez (Sanchez) in Citifinancial's action to quiet title to property and set aside a foreclosure sale under a trust deed. The trial court ruled that the 10-year statute of Civil Code¹ section 882.020, subdivision (a)(1) had not run on a 1983 trust deed because the date for the last payment under the Note was not "ascertainable from the record." Citifinancial argues that the recorded documents, which provided for the last payment to be made "five years from the close of escrow," contain terms sufficient to comply with the terms of section 882.020. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On July 2, 1983, in probate proceedings for the Estate of Evelyn G. Knouf, the probate court confirmed the executor's sale of real property located at 7215-7229-1/2 South Central Avenue, Los Angeles to a corporation known as RR Film International, Ltd. The Order Confirming Sale of Real Property was recorded in the Los Angeles County Recorder's office on July 21, 1983, and provided that the "Terms of Sale" were as follows: "\$9,400 down, balance secured by trust deed payable interest only monthly at 12% per annum, balance all due and payable 5 years after close of escrow subject to Executor's approval of Buyer's financial statements when presented. Other terms are set forth in the original escrow attached to the Petition. Buyer to pay expense of title insurance." The escrow documents were not recorded; the unrecorded Note (1983 Note) dated June 15, 1983, stated that the balance was due and payable on July 21, 1988. The beneficiaries of the 1983 Note were the heirs and devisees of the decedent Knouf.²

On the same day, July 21, 1983, two other documents were recorded: (1) A short form deed of trust in the amount of \$84,600 was recorded naming RR Film International as the trustor and the heirs and devisees of Knouf as the beneficiaries (1983 Trust Deed).

¹ Unless otherwise noted, all statutory references herein are to the Civil Code.

² The 1983 Note and Trust Deed were distributed in the Knouf Estate to Missionary.

The 1983 Trust Deed states that it is “first of record” but does not contain the date for payment of the 1983 Note. The Executor’s Deed on Bid in Open Court.

On September 8, 1983, the property was conveyed to Fernando Plancarte, doing business as Fernando’s Lumber. At the request of Plancarte, Missionary agreed to extend the terms of the 1983 Note for an indefinite period. Payments were made on the 1983 Note through 1995. On October 27, 1995, Plancarte executed a note in the sum of \$136,500 payable to Mortgage Market (1995 Note).³ On November 16, 1995, Plancarte transferred the property to himself as a single man. That same day, a trust deed in favor of the Mortgage Market to secure the encumbrance of \$136,500 was recorded (1995 Trust Deed). This deed of trust was assigned to Ford Consumer Finance (Ford) by instrument recorded January 25, 1996. Ford Consumer Credit later merged with appellant Citifinancial.

After Plancarte ceased making payments on the 1983 Note, Missionary commenced foreclosure proceedings. On September 13, 1998, Missionary recorded a Notice of Trustee’s Sale, and on September 18, 1998, Missionary recorded a Notice of Default and Election to Sell. Missionary asserts notice of the default and sale was sent to all parties; Citifinancial disputes that either it or Ford, its predecessor, received notice.⁴

Pursuant to agreement with Plancarte, the foreclosure sale was postponed several times, eventually taking place on December 15, 2000. Missionary made a bid of \$173,428, the amount of the unpaid balance of the 1983 Note. Missionary recorded a trustee’s deed on May 21, 2001, and on July 26, 2001, the property was conveyed to Jaime Sanchez by grant deed.

³ A copy of the 1995 Note is not in the record.

⁴ The record discloses that the notices were mailed to Ford and Mortgage Market at the same address and that return receipt cards were sent to the addressees. No signed receipt cards are in the record, nor does the record indicate when Ford and Citifinancial merged.

Citifinancial commenced this action on March 4, 2003, seeking to quiet title in the property and for cancellation of instruments, declaratory relief, and judicial foreclosure under the 1995 Trust Deed. Citifinancial claimed the sale was void on the grounds the 10-year statute of the Marketable Record Title Act (Civil Code § 882.020, subd. (a)(1)) barred Missionary from exercising the power of sale in the 1983 Trust Deed. In his amended answer, Sanchez denied all of the allegations of the complaint and asserted as an affirmative defense that the date for the last payment on the 1983 Note could not be ascertained from the record as required by section 882.020, subdivision (a)(1). Sanchez also asserted, among others, the defenses of laches, waiver, and good faith purchaser.⁵ Missionary asserted the same affirmative defenses in its answer.

On December 1, 2003, Citifinancial moved for judgment on the pleadings on the grounds that the 10-year statute section 882.020, subdivision (a)(1), barred exercise of the power of sale in the 1983 Trust Deed. Citifinancial contended that although the 1983 Trust Deed did not specifically provide for a maturity date or the last date of payment, such date was ascertainable from the record because the close of escrow was a prerequisite for the recordation of the 1983 Trust Deed. Therefore, the 10-year period expired not later than July 21, 1998, more than two months before Missionary recorded its Notice of Default.

Sanchez opposed the motion, arguing that the longer 60-year statute of section 882.020, subdivision (a)(2) applied because the maturity date or last date for payment could not be ascertained from the record. Sanchez argued that the probate court order reference to “close of escrow” was too indeterminate to provide a base date from which to calculate the maturity date because “close of escrow” was an event rather than the date certain the statute required. Missionary also filed an opposition, arguing that the assumption that an escrow must be closed for a deed to be recorded did not satisfy section

⁵ Sanchez filed an amended answer to plead more specifically his equitable affirmative defenses after admonishment from the court at the hearing on Citifinancial’s motion for judgment on the pleadings.

882.020, subdivision (a)(1)'s requirement that a maturity date be fixed, and that the search for dates be confined to documents in the record.

The trial court agreed with defendants and denied Citifinancial's motion for judgment on the pleadings. At the hearing the court rejected Citifinancial's argument that the date could be pinned down with accuracy, concluding that to do so would require the court to extend the law concerning the meaning of "date" within the statute.

On May 19, 2004, Sanchez moved for summary judgment on the grounds the date of maturity of the 1983 Trust Deed could not be ascertained from the record, and therefore the 10-year statute for exercising the power of sale had not expired.⁶ Citifinancial responded that the court should adopt an expansive construction of section 882.020, subdivision (a)(1) and find that "close of escrow" was sufficient to constitute a date certain.

On August 4, 2004, the trial court granted summary judgment in favor of Sanchez; the judgment was later modified nunc pro tunc to include Missionary. The court stated specifically that it was not ruling on any equitable defenses asserted by defendants.

DISCUSSION

I. STANDARD OF REVIEW.

We review the trial court's application of a statute to undisputed facts as a question of law, subject to de novo review. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611.)

It is elementary that the objective of statutory interpretation is to ascertain and effectuate legislative intent. The first step in determining that intent is to scrutinize the actual words of the statute, giving them a plain and common sense meaning. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775.) If there is no ambiguity in the statutory language, a court must presume that the Legislature meant what it said, and

⁶ Missionary joined in the motion.

the plain meaning of the statute governs. (*Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268.)

II. THE TERM “CLOSE OF ESCROW” DOES NOT CONSTITUTE A “DATE ASCERTAINABLE FROM THE RECORD.”

Civil Code section 882.020 provides that: “(a) Unless the lien of a mortgage, deed of trust, or other instrument that creates a security interest of record in real property to secure a debt or other obligation has earlier expired pursuant to Section 2911, the lien expires at, and is not enforceable by action for foreclosure commenced, power of sale exercised, or any other means asserted after, the later of the following times: [¶] (1) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is ascertainable from the record, 10 years after that date. [¶] (2) If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is not ascertainable from the record, or if there is no final maturity date or last date fixed for payment of the debt or performance of the obligation, 60 years after the date the instrument that created the security interest was recorded.”

Prior to 1982 in California, the running of the statute of limitations on a note secured by a deed of trust barred any action on the note as well as judicial foreclosure. However, the power of sale under a trust deed had no statute of limitations; rather, the power of sale would “never outlaw.” The rule was based upon the equitable rationale that the mortgagor could not quiet title against his or her encumbered property without first paying the underlying debt. (*Miller v. Provost* (1994) 26 Cal.App.4th 1703, 1707 (*Miller*).)

In 1982, the Marketable Title Act (Civ. Code, § 880.020, et seq.) (Act) overturned the rule that the power of sale in a trust deed “never outlaws.” The purpose of the Act was to make real property more freely alienable and marketable. To that end, the legislature sought to simplify real estate transactions by enabling persons to determine the status and security of recorded titles from an examination of the record. (*Worthington v. Alcala* (1992) 10 Cal.App.4th 1404, 1409.) The Legislature provided for two limitations periods, the 10-year period of section 882.020, subdivision (a)(1) where “the final

maturity date or the last date fixed for payment of the debt or performance of the obligation is ascertainable from the record,” and a 60-year period for all other trust deeds in section 882.020, subdivision (a)(2).

In *Miller, supra*, 26 Cal.App.4th 1703, a note was secured by a trust deed recorded December 20, 1977. The note was unrecorded, and provided that it was due on February 20, 1978. (*Id.* at p. 1706.) After the trustors failed to pay the note, on December 29, 1992, the beneficiaries commenced an action for judicial foreclosure.⁷ The trustors contended the action was barred because the 10-year period of section 882.020, subdivision (a)(1) had elapsed. (*Id.* at p. 1707.) The trial court rejected the trustor’s arguments that the statutory language “ascertainable from the record” included the contents of unrecorded documents, including the note, referenced in the recorded trust deed. Because the only recorded document was silent on the maturity date of the obligation, the 10-year statute did not apply. (*Id.* at p. 1709; see also *Nicolopoulos v. Superior Court* (2003) 106 Cal.App.4th 304, 310 [maturity date of obligation not ascertainable from the record where note was not recorded and trust deed did not contain any reference to due date].)

In general, “escrow” is defined as “[t]he general arrangement under which a legal document or property is delivered to a third person until the occurrence of a condition.” (Black’s Law Dict. (8th ed. 2004) p. 584 col. 2.) Here, we do not know what event or condition would have triggered “close of escrow” because the recorded documents do not contain the particular terms of the escrow. Under these circumstances, the trial court therefore correctly concluded that “close of escrow” was an event, not a date, and did not constitute a date “ascertainable from the record.”

Although it is reasonable to conclude that escrow likely closed because the trust deed was recorded, that is not what the statute requires. The purpose of the Marketable Title Act is to make property more freely and alienable by circumscribing the record that

⁷ Only a nonjudicial foreclosure would have been permitted past the maturity date of the note at issue. (*Miller, supra*, 26 Cal.App.4th at p. 1709.)

must be referred to and ensuring the contents of such record are certain and easily verifiable. Making assumptions about a date in the manner proposed by Citifinancial is contrary to the express provisions of the statute, and we decline to broaden the language of the Act in a manner inconsistent with the statute's purpose.

DISPOSITION

The judgment of the Superior Court is affirmed. Respondents are to recover their costs on appeal.

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ZELON, J.

We concur:

JOHNSON, Acting P. J.

WOODS, J.