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Court of Appeal, Second District, Division 1, California.

Larry WEATHERS, Plaintiff and Appellant,
v.
WASHINGTON MUTUAL BANK FA, Defendant and Respondent.

No. B152346.
(Super.Ct.No. BC206010).

Aug. 28, 2002.

Debtor sued bank and others, seeking to recover damages and quiet title to property quitclaimed to debtor. Bank cross-claimed for judicial foreclosure and appointment of a receiver. The Superior Court, Los Angeles County, No. BC206010, Arnold Levin, J., entered judgment in favor of bank. Debtor appealed. The Court of Appeal, Spencer, P.J., held that: (1) there was no violation of stay imposed by bankruptcy proceeding when trial court dismissed receiver; (2) pendency of bank's cross-complaint against debtor for judicial foreclosure did not preclude bank's resort to nonjudicial foreclosure; and (3) judicial foreclosure judgment would have affected debtor's interest in property.

Affirmed.

West Headnotes

There was no automatic stay in effect for purposes of debtor's action against bank in which trial court appointed a receiver, and thus, there was no violation of stay when trial court dismissed receiver, where bankruptcy court dismissed debtor's fifth bankruptcy petition prior to court's order discharging receiver. [11 U.S.C.A. § 362\(a\)\(1\)](#).

Pendency of bank's cross-complaint against debtor for judicial foreclosure of debtor's property did not preclude bank's resort to nonjudicial foreclosure, for purposes of debtor's action against bank and others seeking to recover damages and quiet title to property; nonjudicial foreclosure was not "action" within meaning of one-action rule permitting only one form of action for recovery of any debt or enforcement of right secured by mortgage, and bank, as beneficiary of trust deed secured by debtor's property, could exercise both remedies concurrently as well as alternatively, and then complete one. [West's Ann.Cal.C.C.P. § 726\(a\)](#).

Bank complied with rule governing actions for the foreclosure of mortgages when it filed its cross-complaint for judicial foreclosure, naming debtor, to whom property had been quitclaimed by original mortgagee, as a party, and thus, judicial foreclosure judgment would have affected debtor's interest in property, even though debtor's name was not on trust deed, for purposes of debtor's action against bank and others seeking to recover damages and quiet title to property. [West's Ann.Cal.C.C.P. § 726\(c\)](#).

Bank's sale of debtor's property under trust deed was presumed to have been conducted fairly and in accordance with the law, in action against bank and others seeking to recover damages and quiet title to property, where deed contained recital regarding compliance with notice requirements. [West's Ann.Cal.C.C.P. § 2924](#).

Debtor waived on appeal claim that bank could not proceed against debtor by nonjudicial foreclosure because debtor's name was not on trust deed, where debtor did not cite any authority, nor did debtor make reasoned argument.

APPEAL from an order of the Superior Court of Los Angeles County, Arnold Levin, Judge. Affirmed.

Larry Weathers, in pro. per., for Plaintiff and Appellant.

Houser & Allison, [Eric D. Houser](#) and Kim Rene Hoffmeyer for Defendant and Respondent.

INTRODUCTION

[SPENCER](#), P.J.

*1 Plaintiff Larry Weathers purports to appeal from the minute order of May 24, 2001, discharging the receiver, denying cross-defendant's request for leave to sue the receiver and dismissing the cross-complaint. An unsigned minute order is not appealable. ([In re Marriage of Macfarlane & Lang \(1992\) 8 Cal.App.4th 247, 253, fn. 4, 10 Cal.Rptr.2d 157](#); [Munoz v. Florentine Gardens \(1991\) 235 Cal.App.3d 1730, 1731, 1 Cal.Rptr.2d 609.](#)) There is, however, a signed order, dated May 24, 2001, discharging the receiver and terminating the receivership; exonerating sureties; approving the receiver's final report; ordering defendant and cross-complainant Washington Mutual Bank to pay a specified deficit; approving receiver's fees and dismissing the cross-complaint. We construe plaintiff's notice of appeal as referring to the court's signed order. ([In re Marriage of Macfarlane & Lang, supra, at pp. 252-253, 10 Cal.Rptr.2d 157.](#))

On appeal, plaintiff contends the superior court violated a bankruptcy automatic stay when it discharged the receiver; challenges defendant Washington Mutual Bank's sale of the real property at issue in a nonjudicial foreclosure sale while its cross-complaint still was pending; asserts that nonjudicial foreclosure was not the proper procedure to follow and questions whether the sale could affect his property rights. We reject plaintiff's challenges to the superior court's order of May 24, 2001 and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

On October 27, 1987, Arturo Hernandez (Hernandez) executed and delivered to Washington Mutual Bank a promissory note payable to the Bank in the principal sum of \$185,400. The note was secured by a trust deed on property located at 1458-1462-1/2 West 36th Street in Los Angeles. The trust deed was recorded in the Office of the Los Angeles County Recorder on November 4, 1987.

On approximately November 30, 1989, without the knowledge or consent of Washington Mutual Bank, Hernandez quitclaimed the property to plaintiff. The quitclaim deed was recorded in the Office of the Los Angeles County Recorder on December 18, 1989.

Plaintiff defaulted on the note. On February 25, 1999, plaintiff filed suit against Washington Mutual Bank and others. In addition to damages, plaintiff sought an accounting and to quiet title. Defendant Washington Mutual Bank demurred to the complaint. The superior court sustained the demurrer to all causes of action except that seeking an accounting, with leave to amend.

On June 11, 1999, after defendant Washington Mutual Bank filed a cross-complaint for judicial foreclosure and appointment of a receiver, plaintiff filed a first amended complaint. The court appointed a receiver on June 28, 1999.

After plaintiff filed a bankruptcy petition in United States Bankruptcy Court, Central District of California, Case No. LA99-35142-SB, the receiver relinquished possession of the property on July 2, 1999. [\[FN1\]](#)

[FN1.](#) This was the third bankruptcy petition plaintiff had filed in less than five years. The first, Case No. LA95-19939-SB, filed on April 20, 1995, was dismissed on April 22, 1996. The second, Case No. LA96-24194-SB, filed on May 2, 1996, was dismissed on July 3, 1996.

On July 16, 1999, defendant Washington Mutual Bank answered the first amended complaint. Some months later, on March 10, 2000, defendant moved for summary judgment or, alternatively, summary adjudication. On May 10,

2000, the superior court granted summary adjudication of two causes of action. The court thereafter tried the remaining causes of action. On August 21, 2000, the court found for defendant Washington Mutual Bank on each of plaintiff's causes of action. The court signed and filed its judgment on October 31, 2000.

*2 In the interim, on September 29, 2000, plaintiff voluntarily dismissed his bankruptcy petition. He filed yet another bankruptcy petition on October 23, 2000, however, designated as Case No. LA00-39791-SB. Plaintiff voluntarily dismissed that petition on January 23, 2001.

In view of plaintiff's continued default on the promissory note secured by the trust deed, Washington Mutual Bank scheduled a trustee's sale for February 9, 2001. On the preceding day, plaintiff filed yet another bankruptcy petition. The bankruptcy court dismissed that petition on March 27, 2001. The order of dismissal prohibited plaintiff from filing another bankruptcy petition within 180 days.

Washington Mutual Bank rescheduled a trustee's sale. The property was sold accordingly on April 9, 2001. The May 24, 2001 order discharging the receiver and dismissing the Bank's cross-complaint followed.

DISCUSSION

Violation of Automatic Stay

[1] The filing of a bankruptcy petition operates as a stay of the continuation of any proceeding commenced against the debtor before the petition was filed. ([11 U.S.C. § 362\(a\)\(1\)](#).) It remains in force, however, only until the bankruptcy court disposes of the case (*id.*, subd. (c)(2)) or lifts the stay (*id.*, subds. (d)-(f)).

The bankruptcy court dismissed plaintiff's fifth bankruptcy petition on March 27, 2001. When the superior court made its order discharging the receiver on May 24, therefore, there was no stay in effect.

Propriety of Judicial Foreclosure

[2] A nonjudicial foreclosure is not an "action" as defined in [Code of Civil Procedure section 22](#), and therefore does not violate the "one form of action" rule codified in [Code of Civil Procedure section 726](#), subdivision (a). ([Birman v. Loeb \(1998\) 64 Cal.App.4th 502, 509, 75 Cal.Rptr.2d 294.](#)) Moreover, one may exercise the remedies of nonjudicial and judicial foreclosure concurrently as well as alternatively. The beneficiary of a trust deed can pursue both remedies at once, and then elect to complete but one. ([Vlahovich v. Cruz \(1989\) 213 Cal.App.3d 317, 322, 261 Cal.Rptr. 565](#); accord, [McDonald v. Smoke Creek Live Stock Co. \(1930\) 209 Cal. 231, 237, 286 P. 693.](#)) The pendency of Washington Mutual Bank's cross-complaint for judicial foreclosure consequently did not preclude its resort to nonjudicial foreclosure.

[3] Washington Mutual Bank complied with the dictates of [Code of Civil Procedure section 726](#), subdivision (c), when it filed its cross-complaint for judicial foreclosure, naming plaintiff, to whom Hernandez had conveyed the property, as a party. A judicial foreclosure judgment thus would have affected plaintiff's interest in the property.

[4][5] The trustee's deed recites that "[a]ll requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of Sale have been complied with." The recital creates a rebuttable presumption that the trustee conducted the sale fairly and according to the law. ([Civ.Code, § 2924](#); [Brown v. Busch \(1957\) 152 Cal.App.2d 200, 204, 313 P.2d 19.](#)) Plaintiff has failed utterly to offer facts rebutting the presumption. He also cites no authority for the proposition that the Bank could not proceed by nonjudicial foreclosure simply because his name was not on the trust deed. The failure to make reasoned argument and to cite pertinent authority waives the claim on appeal. ([Mansell v. Board of Administration \(1994\) 30 Cal.App.4th 539, 545- 546, 35 Cal.Rptr.2d 574.](#))

*3 The order is affirmed.

We concur: [ORTEGA](#) and [MALLANO](#), JJ.

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- [2002 WL 32167603](#) (Appellate Brief) Respondent's Brief (May. 10, 2002)Original Image of this Document (PDF)

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