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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHRISTINA WALSH,

Plaintiff and Appellant,

v.

KEVIN WALSH,

Defendant and Respondent.

A130814

(Contra Costa County
Super. Ct. No. MSC0902791)

Pro per appellant Christina Walsh appealed after the trial court sustained respondent Kevin Walsh’s demurrer to appellant’s first amended complaint. She argues that a judgment of dissolution in a prior action did not bar her claims in this separate lawsuit, and that the trial court did not treat her fairly. We disagree and affirm.

I.

FACTUAL AND PROCEDURAL
BACKGROUND

In setting forth the relevant facts for purposes of our review of the sustaining of a general demurrer, “we are guided by the familiar rules applicable in this setting. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed. [Citation.]’ [Citation.]” (*Moore v. Conliffe* (1994) 7 Cal.4th 634, 638.) Some of the facts set forth herein are taken from a nonpublished opinion from Division Three of this court, of which we take judicial notice. (*In re Marriage of Walsh* (Sept. 19, 2011, A130034).)

This controversy involves two separate proceedings concerning the parties' divorce. Respondent filed for dissolution of marriage in San Mateo County, and a judgment of dissolution was filed in that action (hereafter "San Mateo dissolution proceeding") on November 3, 2008. (*In re Marriage of Walsh* (Super. Ct. San Mateo County, No. FAM094301).) According to findings and conclusions attached to the judgment, the trial court in the San Mateo dissolution proceeding adjudged a home in Walnut Creek to be respondent's separate property. The trial court also divided approximately 13,000 "Sequence options," concluding that appellant was entitled to receive one half of them.

On April 3, 2009, appellant filed a motion to set aside/vacate the judgment in the San Mateo dissolution proceeding, claiming, among other things, that she had been unable to attend the second day of trial in the matter, and that respondent and his attorney lied in the proceeding. Respondent filed a response on June 5, 2009. Appellant did not appear at a scheduled June 2009 hearing on the motion, and the motion was taken off calendar.

On October 6, 2009, proceeding without an attorney, appellant filed in Contra Costa County her complaint in the instant action, alleging causes of action for breach of contract and fraud. She alleged that in August 2000, the couple sold their Alamo home, which was owned as community property, with the intent of using the proceeds to buy a home in Walnut Creek, but that respondent "induced" her to sign a quitclaim deed to the Walnut Creek home, so that it would be owned solely by him. Appellant also included allegations about various shares of jointly owned stock, and claimed that respondent had not transferred "Sequence stock options" to her, as ordered. Appellant attached several documents to her complaint, including the judgment of dissolution in the San Mateo proceeding.

Respondent demurred to the complaint on the ground that all issues raised in appellant's complaint were previously decided in the San Mateo dissolution proceeding, and that her claims thus were barred by the doctrines of collateral estoppel and res judicata. In her opposition, appellant argued that the San Mateo dissolution proceeding

did not resolve all issues raised in her complaint in the instant action. Specifically, she noted that the judgment in the San Mateo dissolution proceeding dealt with a different home from the one specified in her complaint, as the house number she alleged was 2624, whereas the judgment listed the house number as 2625 (albeit on the same street). In his reply, respondent stated that the reference to a different house number was simply a typographical error in the San Mateo trial court's order.

An "unreported minute order" filed following a hearing on January 27, 2010, states that the demurrer was continued as to the issue of the Walnut Creek property, to allow respondent time to demonstrate that the different house number in the San Mateo dissolution proceeding order was a typographical error. As for the allegations regarding stock acquired during the parties' marriage, the demurrer was sustained for uncertainty, because it was unclear from appellant's complaint whether stock other than the stock addressed in the San Mateo dissolution proceeding was at issue.

In a minute order dated March 3, 2010, the trial court stated that it was obvious that the judgment from the San Mateo dissolution proceeding contained a typographical error regarding the Walnut Creek house, and that the court would not require additional documentation.¹ The court concluded that appellant's claim as to that property was barred by the doctrine of res judicata. As to appellant's "fraud claims," respondent's demurrer was sustained with leave to amend. The trial court's order stated that appellant "must allege facts indicating she learned of fraud after judgment."

Appellant filed an amended complaint on March 25, 2010, again without the assistance of an attorney. She alleged that she learned of "numerous fraudulent acts committed" by respondent when she received the final judgment of their divorce, which was prepared by respondent's counsel. She again alleged that the parties sold their Alamo home, held as community property, that the proceeds were used to purchase a Walnut Creek home, but that respondent "forcefully approached" appellant about signing

¹ The record contains an order from the San Mateo proceedings, confirming that the judgment of dissolution in that case concerned the same property as the one at issue in this case.

a quitclaim deed to the Walnut Creek home, so that it would be owned solely by respondent. Appellant further alleged that all proceeds from the Alamo home were paid solely to respondent, that respondent refused to discuss his actions with her, and that she signed the quitclaim to the Walnut Creek property, believing that respondent would keep his promise to reimburse her for her community property share. She alleged that the “truth” was “revealed” in the judgment in the San Mateo dissolution proceeding, because it then became clear that respondent had “no intention of sharing the proceeds from the sale of our jointly owned Alamo house.”

As for the parties’ jointly owned stock, appellant claimed that the final judgment in the San Mateo dissolution proceeding falsely stated that respondent paid appellant for her equal share of the stock. Respondent also fraudulently claimed to have paid taxes on the shares he exercised, a claim that was revealed in the final judgment. Respondent thereby breached his agreement by failing to pay appellant for an equal share of stock acquired during their marriage, and by failing to pay taxes “as fraudulently promised.”

On May 3, 2010, respondent demurred to the first amended complaint, arguing that appellant still did not sufficiently allege facts demonstrating that her claims were not barred by res judicata and collateral estoppel.

Meanwhile, in the San Mateo dissolution proceeding, appellant moved to have her motion to vacate the judgment placed back on calendar.² Shortly thereafter, appellant filed an opposition to the demurrer in the instant action. Although the opposition is not included in the appellate record, we infer from respondent’s reply that appellant’s opposition focused on the pending motion to set aside the judgment in the San Mateo dissolution proceeding, and whether the judgment there was final for purposes of res

² The motion to set the motion to vacate back on calendar was granted on July 30, 2010, and the court scheduled a hearing on the motion. Respondent appealed an interlocutory order related to briefing on the motion, but Division Three of this court dismissed the appeal. (*In re Marriage of Walsh, supra*, A130034.) According to the register of actions in the San Mateo dissolution proceeding, available on the trial court’s website, the hearing on the motion to vacate has been continued several times, and is currently scheduled to be heard on July 20, 2012.

judicata. Respondent argued in his reply that it was “inconceivable” that the San Mateo court would undo the results of a two-day trial, and again argued that appellant’s complaint in this action should be dismissed based on res judicata and collateral estoppel. He requested, in the alternative, that the court rule on the demurrer, but stay entry of a final ruling until the San Mateo trial court ruled on the pending motion to vacate.

A tentative ruling was issued in this action on August 30, 2010, sustaining respondent’s demurrer as to appellant’s entire first amended complaint, without leave to amend. The tentative ruling was then set aside, and the hearing on the demurrer was continued, after respondent notified the trial court that the San Mateo trial court had agreed to place appellant’s motion to vacate back on calendar (*ante*, fn. 2).

At a continued hearing in the Contra Costa action on November 10, 2010, the trial court stated that it had never received further information from respondent’s counsel regarding the motion to vacate in the San Mateo dissolution proceeding, and that the previous tentative ruling was still the ruling of the court. Counsel stated that he had never received a copy of the court’s tentative ruling, and counsel and the court briefly discussed that issue. The court told appellant, “I don’t mean to cut you out of this conversation. It’s a procedural problem here.” The court stated that the clerk would provide a copy of the tentative ruling to both parties, and the hearing concluded without any discussion of the merits of the demurrer.

The tentative ruling thereafter became the order of the court, and the demurrer was sustained without leave to amend. The trial court concluded that appellant had “failed to amend her complaint to allege claims concerning joint stock other than stock covered in” the November 2008 judgment in the San Mateo dissolution proceeding. It further concluded that appellant had failed to allege facts showing she was not aware of the claims that respondent presented in the San Mateo dissolution proceeding, that appellant had “not articulated an intelligible theory as to how judgment might be subject to collateral attack in this action,” and that appellant had “not provided any legal bases establishing that her long-delayed motion to set aside the November 2008 family law judgment is timely and otherwise meritorious.” The trial court’s minute order also states:

“Dismissal entered/filed on the complaint of 1st amended complaint of Walsh.” This appeal followed.³

II. DISCUSSION

A. *Standard of Review.*

The standard which guides our review following an order sustaining a demurrer is well established. “ ‘When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.’ ” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126, quoting *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

B. *Res Judicata Bars Appellant’s Complaint.*

1. General legal principles

Appellant argues that the doctrines of res judicata and collateral estoppel do not apply here. “ ‘It is established that the doctrine of res judicata precludes parties or their privities from relitigating a cause of action that has been finally determined by a court of competent jurisdiction. [Citations.] . . . California follows the primary right theory of Pomeroy; i.e., a cause of action consists of 1) a primary right possessed by the plaintiff, 2) a corresponding primary duty devolving upon the defendant, and 3) a delict or wrong

³ Orders sustaining demurrers are not appealable; rather, appeals generally lie from a judgment of dismissal. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1019.) No judgment appears in the record on appeal; however, this court may deem an order sustaining a demurrer to incorporate a judgment of dismissal. (*Ibid.*) We find it particularly appropriate to do so here, where the absence of a final judgment likely results from inadvertence or mistake, where respondent does not argue for dismissal of the appeal, and where the trial court’s minute order clearly stated that dismissal was entered as a result of the court’s ruling on the demurrer. (*Ibid.*; see also *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1032, fn. 1.)

done by the defendant which consists in a breach of such primary right and duty. [Citation.] Thus, two actions constitute a single cause of action if they both affect the same primary right.’ . . . [Citation.]” (*Acuña v. Regents of University of California* (1997) 56 Cal.App.4th 639, 648.) “A secondary aspect of res judicata is collateral estoppel.” (*Takahashi v. Board of Education* (1988) 202 Cal.App.3d 1464, 1473.) Collateral estoppel has the additional requirements that the issue to be precluded was actually litigated and necessarily decided. (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

2. Both proceedings involved same primary right

In determining that the Walnut Creek home was respondent’s separate property, the trial court in the San Mateo dissolution proceeding concluded: “The court finds that [the home] was purchased with [respondent’s] one half of the funds from the sale of the [Alamo home]. The mortgage was paid with [respondent’s] separate property. There has been no verifiable evidence of any reimbursements or community contributions to that property, nor has there been sufficient evidence of [appellant] contributing any of her separate property to the purchase of the property.” The trial court in this action concluded that the previous judgment barred appellant’s claim regarding the property in this action, based on the doctrine of res judicata. As we understand it, appellant argues that the judgment in the San Mateo proceeding was concerned only with the division of community property at the time of dissolution and did not address the “second half” of proceeds from the Alamo property, whereas her complaint in this action alleges fraud in connection with the purchase of the Walnut Creek home, which has not been litigated previously.

A review of appellant’s first amended complaint reveals that the “fraud” and “breach of contract” appellant alleged amounted to a disagreement with the judgment rendered in the San Mateo dissolution proceeding. She alleged in this action that respondent promised to reimburse her for community property contributions to the Walnut Creek home and jointly owned stock, but that his true intention to break those

promises was revealed in the judgment of dissolution, which was based on false representations in the dissolution proceeding. This is another way of saying that respondent presented certain evidence in the dissolution proceeding, which was believed by the trial court, but that appellant had evidence that conflicted with the trial court's conclusion. Both the dissolution proceeding and the complaint in the instant action concerned the same primary right—the proper characterization of the Walnut Creek property and jointly owned stock.

It may be true, as appellant argues, that various evidentiary issues were not specifically raised in the San Mateo dissolution proceeding. However, “[i]t is axiomatic that a final judgment serves as a bar not only to the issues litigated *but to those that could have been litigated at the same time.*” (*Takahashi v. Board of Education, supra*, 202 Cal.App.3d at p. 1481, italics added.) “ ‘If the matter was within the scope of the action, related to the subject matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.’ ” (*Ibid.*, quoting *Sutphin v. Speik* (1940) 15 Cal.2d 195, 202, original italics.) In other words, although it may not have been entirely clear to appellant that respondent would not keep promises he allegedly made regarding the division of property during their marriage until she received the judgment of dissolution, appellant *could* have litigated those promises in the San Mateo proceeding before judgment was entered. That she either did not do so, or did so and the trial court rejected her arguments, does not alter the fact that the issues previously could have been litigated. (*Takahashi* at p. 1481.)

In re Marriage of Starr (2010) 189 Cal.App.4th 277, cited in appellant's reply brief, illustrates this point. *Starr* involved claims that a husband made false promises to a wife in exchange for quitclaiming her interest in their house (*id.* at p. 279), similar to what appellant alleged here. In *Starr*, the trial court adjudicated the issues in the parties' dissolution action, and concluded that the house was community property, based in part on the undue influence that the husband exerted over the wife. (*Id.* at pp. 280-281.) Likewise here, appellant could have litigated such issues in the San Mateo dissolution

proceedings, and need not have waited until receiving the judgment of dissolution to realize that respondent allegedly intended to break his promises to her.

The other cases upon which appellant relies likewise do not assist appellant. *Gottlieb v. Kest* (2006) 141 Cal.App.4th 110 concluded that collateral estoppel did not apply to a party who was not in privity with the companies involved in a prior action (*id.* at pp. 147-149, 156), whereas here there is no dispute that the parties involved in both actions are identical. *Henn v. Henn* (1980) 26 Cal.3d 323 held that where a dissolution decree does not mention an asset, the decree is neither res judicata nor collateral estoppel on the issue, and a party may later maintain a separate action to determine the right to the benefit. (*Id.* at pp. 331-332 & fn. 6.) Here, appellant claims on appeal that the judgment in the San Mateo dissolution proceeding did not address half of the proceeds of the sale of the parties' Alamo home. However, her complaint focused not on requesting the division of an omitted asset, but on challenging the bases for the San Mateo court's ruling.⁴

In short, we reject appellant's argument that the two proceedings addressed different claims. In light of this conclusion, we need not consider whether the related doctrine of collateral estoppel is applicable (and thus whether the issues to be precluded were actually litigated and necessarily decided).

3. Finality of judgment

Appellant next argues that the finality of the judgment of dissolution has been "brought into question" because of her motion to vacate the judgment in the San Mateo dissolution proceeding. She claims that if the San Mateo court grants her motion to set aside the judgment in the dissolution action, respondent's claims of "res judicata and

⁴ Quoting *In re Marriage of Dorris* (1984) 160 Cal.App.3d 1208, appellant claims that it is " 'now settled that once a judgment distributing the marital property has become final, any dispute concerning marital property not disposed of in the judgment must be resolved by separate action.' " (*Id.* at p. 1215, citing *Henn v. Henn, supra*, 26 Cal.3d at p. 332.) In fact, Family Code section 2556 now authorizes an alternative procedure to the one authorized under *Henn*, and provides that a court has continuing jurisdiction to award community assets and liabilities that have not been previously adjudicated by a judgment. (11 Witkin, Summary of Cal. Law (10th ed. 2005) Community Property, § 247, p. 865.)

collateral estoppel will become null.” Neither party cites any legal authority for the proposition that a judgment that is currently the subject of a motion to vacate is no longer “final” for purposes of res judicata (indeed, respondent never directly addresses the issue). In general, “[w]e need not address arguments for which a party provides no supporting authority.” (*Michael P. v. Superior Court* (2001) 92 Cal.App.4th 1036, 1042.) Assuming that appellant has properly raised this issue, we disagree that she has identified reversible error.

For purposes of res judicata, the pendency of an appeal precludes finality under California law. (*Nathanson v. Hecker* (2002) 99 Cal.App.4th 1158, 1163, fn. 1.) Here, the judgment in the San Mateo dissolution proceeding was filed in 2008, and there is no indication that an appeal was ever filed. The judgment thus would be unquestionably final, except that appellant is attempting to vacate it. Our independent research has revealed no California case addressing a situation such as the one presented here. *National Union Fire Ins. Co. v. Stites Prof. Law Corp.* (1991) 235 Cal.App.3d 1718 noted that a judgment is not final, and res judicata does not apply, where “a judgment is still open to direct attack by appeal *or otherwise*.” (*Id.* at p. 1726, italics added.) The issue in that case, however, was whether a party could challenge the jurisdiction of arbitrators to hear a case, where the arbitrators’ decision was the subject of the current appeal. (*Id.* at pp. 1721-1723, 1726.)

According to the Restatement Second of Judgments, “The rules of res judicata are applicable only when a final judgment is rendered.” (Rest.2d Judgments, § 13, p. 132.)⁵ Comment a to the section provides that the prior judgment “must ordinarily be a firm and stable one, the ‘last word’ of the rendering court—a ‘final’ judgment.” (Rest.2d Judgments, § 13, com. a, p. 132.) Comment f to the section addresses situations such as the one presented here: “A judgment otherwise final for purposes of the law of res

⁵ The California Supreme Court has expressed approval of the Restatement Second of Judgments, and has specifically cited to section 13, albeit for a different point of law. (*George Arakelian Farms, Inc. v. Agricultural Labor Relations Bd.* (1989) 49 Cal.3d 1279, 1290-1291 & fn. 7.)

judicata is not deprived of such finality by the fact that time still permits commencement of proceedings in the trial court to set aside the judgment and grant a new trial or the like; *nor does the fact that a party has made such a motion render the judgment nonfinal.*” (Rest.2d Judgments, § 13, com. f, p. 135, italics added.)⁶ The Restatement further provides, however, that if a judgment is in fact set aside by the trial court, it “ceases to be final.”⁷ (*Ibid.*) The Restatement observes that the pendency of a motion to set aside a judgment is relevant in deciding whether the question of preclusion should be decided in a second action, and that it *may* be appropriate to postpone a decision regarding preclusion until the attack on the first judgment is concluded (*ibid.*), as respondent himself requested in this case.

The trial court in this action had been informed of the pending motion to vacate in the San Mateo dissolution proceeding before it issued its final ruling on respondent’s demurrer, an indication that it did not consider a continuance to be appropriate. Its order sustaining the demurrer states that appellant had not established that her “long-delayed

⁶ This is consistent with the federal rule and the rule in a majority of states, that a judgment may be used for purposes of res judicata in a later trial at any time before the first judgment has been reversed, *vacated*, or modified. (*Sandoval v. Superior Court* (1983) 140 Cal.App.3d 932, 937, fn. 2.) As set forth above, the rule in California is that a judgment is not final for purposes of res judicata pending appeal. (*Id.* at pp. 936-937.)

⁷ Relying on a previous version of the Restatement, the court in *De Weese v. Unick* (1980) 102 Cal.App.3d 100 noted that res judicata is applicable only where a judgment is final, and the period of time within which to subject it to direct attack, either by appeal or through *a motion to vacate*, has elapsed. (*Id.* at p. 106, citing Rest. Judgments, § 1, com. b.) The Restatement of Judgments has since been revised. In any event, unlike here, the time in which to challenge the judgment at issue in *De Weese* had long since passed. (*De Weese* at pp. 106-107.)

motion” to vacate was meritorious.⁸ If appellant is ultimately successful in setting aside the judgment of dissolution in the San Mateo proceeding, presumably she will have an opportunity to raise the identical issues that she attempts to raise in this proceeding in the San Mateo court. The doctrine of res judicata “seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration.” (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 334, p. 938.) Reversing the sustaining of the demurrer here would result in the type of multiple litigation and wasted effort in judicial administration that the doctrine of res judicata seeks to avoid. Under the circumstances, where no appeal was taken from the first judgment and it otherwise would have been final long ago, the sustaining of the demurrer based on the doctrine of res judicata was appropriate.

In related arguments, appellant claims that respondent’s counsel committed fraud on the trial court by withholding relevant information about activity in the San Mateo dissolution proceeding. She also complains that she was not permitted to address the court at the November 10, 2010, hearing, and that she would have informed the court of developments in the San Mateo proceeding had she been permitted to do so. She speculates that, had the trial court been provided information regarding the status of the San Mateo dissolution proceeding, the court in this action might have continued the demurrer hearing until the San Mateo trial court ruled on appellant’s motion to vacate

⁸ A review of the register of actions and minute orders in the San Mateo proceeding reveals that the motion to vacate was originally set for a hearing on November 9, 2010, but was vacated. Although it is unclear why the date was vacated, the vacation came less than a month after respondent filed a notice of appeal in that action. (*In re Marriage of Walsh, supra*, A130034.) After the appeal was dismissed on September 19, 2011, a hearing on the motion to vacate was scheduled for November 28, 2011. A hearing was held on November 28, but the motion to vacate apparently was not addressed at the hearing, and an additional hearing was scheduled for January 13, 2012. The January hearing was taken off calendar by stipulation of the parties, and was continued until February 10. The court heard argument regarding an attorney fees motion on February 10, and continued the issue of the motion to vacate. A hearing was scheduled for April 27, but the April hearing was continued to July 20, again upon stipulation of the parties.

(which it apparently still has not done, *ante*, fn. 2). As set forth above, however, the trial court had been informed of the motion to vacate in the San Mateo dissolution proceeding. Because appellant has not convinced us that a continuance of the demurrer was appropriate, any error in not permitting appellant time to address the court was harmless error.

4. No reversal based on alleged “extrinsic fraud”

Appellant also argues that she was prevented from fully presenting her case in the San Mateo dissolution proceeding because of extrinsic fraud. “It is well settled in California that a judgment procured by extrinsic fraud or mistake may be attacked either by a motion in the same action or by an independent action in a court having equity jurisdiction, and that each remedy is distinct and cumulative. [Citations.]” (*Rohrbasser v. Lederer* (1986) 179 Cal.App.3d 290, 297.) “Extrinsic fraud occurs when a party is deprived of the opportunity to present his claim or defense to the court; where he was kept ignorant or, other than from his own negligence, fraudulently prevented from fully participating in the proceeding. [Citation.] Examples of extrinsic fraud are: concealment of the existence of a community property asset, failure to give notice of the action to the other party, and convincing the other party not to obtain counsel because the matter will not proceed (and then it does proceed). [Citation.] The essence of extrinsic fraud is one party’s preventing the other from having his day in court.” (*City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1067.

In arguing that the judgment of dissolution was obtained through extrinsic fraud, appellant directs this court to several documents filed in the San Mateo dissolution proceeding, of which this court has taken judicial notice. She argues that respondent’s counsel made false statements when she requested a continuance in the San Mateo dissolution proceeding, and lied about appellant’s ability to retain counsel. These issues were not alleged in appellant’s first amended complaint in *this* action. Appellant likewise did not seek an equitable remedy in this action, but instead sought damages related to the money she claims she should have received from the sale of the parties’ Alamo home and jointly held stock.

That is not to say that appellant is precluded from raising the issue of extrinsic fraud. Indeed, this appears to be the basis of her pending motion to vacate the judgment in the San Mateo dissolution proceeding. However, the existence of extrinsic fraud is not a valid basis to reverse the sustaining of respondent's demurrer in this case, as it was not the subject of appellant's first amended complaint.

5. No leave to amend

The trial court sustained respondent's demurrer without leave to amend. Although appellant claims that her complaint "could have been easily amended to better articulate her causes of action," she does not sufficiently identify such amendments. She therefore has not established that the trial court abused its discretion in not granting leave to amend.

C. No Duty to Clarify Minute Orders.

Finally, citing *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, appellant argues that the trial court failed to provide a fair hearing when it neglected to clarify minute orders and judgments. In *Gamet*, the trial court issued "confusing, indeed misleading" orders in a case in which a party involuntarily represented herself, and the party received information that was "plainly inaccurate," leading the appellate court to conclude that "even a licensed attorney stepping into th[e] case would have had trouble figuring out exactly what had happened." (*Id.* at p. 1283-1285.) The trial judge also made comments that he could " 'jam' " the unrepresented party, and that "he wanted to 'keep the heat on,' " contributing to an appearance of "substantial unfairness." (*Id.* at p. 1283.) The appellate court acknowledged that in propria persona litigants are not entitled to special exemptions from the California Rules of Court or Code of Civil Procedure, but emphasized that they are "entitled to treatment equal to that of a represented party," and that judges should take special care in such situations to "make sure that verbal instructions given in court and written notices are clear and understandable by a layperson." (*Gamet* at p. 1284.)

Here, appellant identifies no such misleading orders, or any action by the trial court that led to an appearance of substantial unfairness. She complains that when the

trial court sustained the demurrer to her original complaint, it did not provide sufficient instructions on how to amend the complaint. The trial court's first order addressing the demurrer to appellant's original complaint specifically provided that it was "not clear from the complaint if stock other than the Simplex and Sequence stock is in issue." The second order addressing the demurrer to the original complaint provided that appellant "must allege facts indicating she learned of fraud after judgment." These statements explained, in language sufficiently clear to a layperson, what appellant needed to allege in order to state a valid claim for relief.

Appellant again complains that she was not permitted to speak at the November 10, 2010 hearing in the trial court. It is clear from the transcript of the hearing that respondent's counsel requested an opportunity to be heard; however, it is unclear whether appellant made such a request. She filed a declaration with the court two days before the hearing. The trial court's order sustaining the demurrer states that the document was not considered, as it was an improper ex parte communication, and court staff "was unable to so advise [appellant] as her mail box was full." Even if the declaration had been considered, it does not appear that appellant's declaration specifically stated her intent to appear or speak at a hearing on the demurrer. Because appellant does not identify any information she would have raised at the hearing that would have changed the result, this is not the type of situation that warrants a " 'do-over,' " as was ordered in *Gamet v. Blanchard, supra*, 91 Cal.App.4th at page 1285.

III.
DISPOSITION

The judgment is affirmed. Respondent shall recover his costs on appeal.

Sepulveda, J.*

We concur:

Ruvolo, P. J.

Rivera, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division 4, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.