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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JULIANNA AGARDI,

Plaintiff and Appellant,

v.

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant and Respondent.

A132949

(San Francisco County
Super. Ct. No. CGC-10-500534)

Plaintiff Julianna Agardi, proceeding in propria persona, appeals from the trial court's judgment, entered after the court granted defendant City and County of San Francisco's (City) motion for judgment on the pleadings on all of Agardi's claims, each of which is related to the manner in which the City manages its obligation to provide general assistance. Agardi argues that reversal is necessary because she was entitled to entry of final judgment in her favor and the trial court should never have taken the City's motion for judgment on the pleadings under submission. In addition, she argues that, as to her first three causes of action, the court improperly found that her complaint failed to state a claim upon which relief can be granted and that her complaint could not be amended to do so. We affirm the judgment.

BACKGROUND

California counties, under Welfare and Institutions Code section 17000,¹ have an obligation to provide relief and support for the incapacitated and indigent. Counties may meet this obligation by adopting a “general assistance standard of aid,” defined in section 17000.5. County programs administering such a standard of aid are commonly known as general assistance (G.A.).

The City’s G.A. program was modified when voters approved Proposition N, commonly known as the “Care Not Cash” initiative. This proposition modified the City’s Administrative Code and required that, for G.A. recipients who declared themselves homeless, aid would be primarily provided in the form of “in-kind benefits for housing, utilities and meals” rather than cash. (S.F. Admin. Code, § 20.59.3.)

Agardi is a San Francisco resident and receives G.A. benefits. Agardi alleges that she receives her benefit in the form of a check payable to her and the Tenderloin Housing Clinic (THC). She must endorse this check and turn it over to THC, which retains most of the benefit in return for housing provided to Agardi. The remainder of her benefit is returned to her in the form of a check from THC.

On June 8, 2010, Agardi, proceeding in pro per, filed an unverified complaint which alleged seven causes of action: (1) the City has violated an obligation to pay G.A. recipients the full G.A. benefit of up to \$395 per month in cash; (2) the City has violated an obligation to transfer this full cash payment to the recipient’s electronic benefits transfer (EBT) card; (3) a charge of fraud that appears to be based on an allegation that Proposition N did not fully specify the types of housing that might be provided to G.A. recipients; (4) “Violations of plaintiff’s federal housing rights,” alleging that she has been placed in a “commercial hotel,” the rent for which, though paid by the City, exceeds her G.A. benefit and that she lacks tenant’s rights; (5) “Misrepresentation,” repeating and expanding on the allegations specified in the fourth cause of action; (6) “Violations of plaintiff’s federal housing rights,” alleging that Proposition N violates the “Brooke

¹ All unstated section references are to the Welfare and Institutions Code.

Amendment”’; and (7) a claim that, as a third party beneficiary to a contract between the City and THC, she has standing to bring suit “for fraud, and monetary compensation and all related damages emanating from [Proposition N].”²

The City answered, on July 8, 2010, with a general denial and 11 affirmative defenses. For the affirmative defenses, the City provided no legal or factual support for their application to the case at hand.

On October 1, 2010, Agardi filed a motion to strike the City’s answer and a separate motion for judgment on the pleadings. The court ruled on these motions on December 7, 2010. The motion to strike the City’s answer was denied. The motion for judgment on the pleadings was granted, with leave for the City to amend, as to affirmative defenses 2 through 10. The motion was denied as to the first (failure to state a claim) and eleventh (uncertainty, because the complaint is uncertain, ambiguous, and unintelligible) affirmative defenses.

The City filed an amended answer, on January 6, 2011, which repeated the general denial and raised eight affirmative defenses: (1) failure to state a claim; (2) res judicata; (3) collateral estoppel; (4) statute of limitations; (5) failure to join a necessary and indispensable party; (6) failure to comply with Government Code; (7) other action pending; and (8) uncertainty. The amended answer pled the affirmative defenses with greater specificity, providing support for the application of those affirmative defenses that were subject to the court’s partial grant of Agardi’s motion for judgment on the pleadings.

Agardi responded to the amended answer with two motions, filed on February 2, 2011: (1) a motion for entry of final judgment and (2) a motion to strike the amended answer. In these motions, Agardi argued, as she argues on appeal, that the amended answer, like the original answer, alleged insufficient facts to counter her complaint and that, because the amended answer was deficient, she was entitled to final judgment in her favor due to the prior partial grant of her motion for judgment on the pleadings. The City

² As explained below, only the first three of these causes of action are the subject of this appeal.

filed an opposition to these motions on March 14, 2011. Agardi's motions were noticed for hearing on March 7, 2011, but the hearing was continued first to March 24 and then to April 19.

The City filed its own motion for judgment on the pleadings on February 17, 2011. On February 22, 2011, Agardi responded with a special demurrer to the City's motion and a separate motion to strike the City's motion. The City filed oppositions to these filings on March 17, 2011.

By the time these motions were considered by the court, a different judge had been assigned to the law and motion department. A hearing was held on April 19, 2011, and the court granted the City's motion for judgment on the pleadings. The court construed Agardi's special demurrer and her motion to strike the City's motion for judgment on the pleadings as opposition papers. Agardi's motion to strike the amended answer was denied as moot. Agardi's motion for entry of final judgment was denied. In reaching these outcomes, the court concluded that Agardi's complaint depended on the argument that the City is obligated to provide GA benefits in the form of cash and that this proposition is contrary to numerous appellate decisions. The court also concluded that it would not be possible for Agardi to amend her complaint to survive another motion for judgment on the pleadings, so no leave to amend was granted.

Judgment in favor of the City was entered on June 27, 2011. On July 29, 2011, Agardi filed an ex parte application requesting that the court issue a writ against itself, arguing that the December 2010 order entered by a different judge had deprived the court of the authority to enter judgment in favor of the City and that a separate hearing on her motions to strike the City's amended answer and for entry of final judgment had never been held. Both the City and Agardi agree that the court denied this application, though the denial is not part of the record on appeal.³

³ The City elected to proceed by appendix rather than by clerk's transcript, pursuant to California Rules of Court, rule 8.124. The record consists of the City's appendix and an incomplete clerk's transcript. No recorder's transcript has been provided.

DISCUSSION

I. *Agardi's Motion for Judgment on the Pleadings*

Agardi places great weight on the December 7, 2010 order that partially granted her motion for judgment on the pleadings. The order did not touch the City's general denial of Agardi's complaint or two of the affirmative defenses that the City advanced. The City was ordered to amend its answer, and the City did so.

Agardi argues that the amended answer was deficient because “[i]t was the same as the original answer, no facts stated. Only affirmative defenses, no facts.” However, the amended answer differed substantially from the original answer. For the affirmative defenses that were the subject of the partial grant of Agardi's motion for judgment on the pleadings, the amended answer either dropped the defense or, unlike the original answer, explained the legal basis for the application of the defense. Agardi believes that more was required of the City by the December 7, 2010 order, which she characterizes as requiring the City to allege facts to counter her own allegations.⁴ However, the court's order does not support this argument. Indeed, the order left the City's general denial untouched, as it was obliged to do. (Code Civ. Proc., § 431.30, subd. (d) [permitting a general denial to an unverified complaint].) We conclude that the City's amended answer was an adequate response to the court's order.

Assuming a deficient amended answer, Agardi argues that the City should have been held in contempt by the court. Moreover, she believes that a deficient answer entitled her to an entry of final judgment in her favor because, she argues, the December 7, 2010 order “properly upheld the Welfare and Institutions Code §§ 1700 [*sic*], as basis for respondent's mandatory duty and appellant's cause of action and grounds for it under

⁴ In her reply brief, Agardi states that “Respondent was ordered to amend its answer with facts under *Nakashima*” and refers to a tentative ruling that is not part of the record. Agardi is apparently relying on *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, which discusses defects in pleadings when a motion for summary judgment is heard. Nothing in *FPI Development, Inc.* provides support for the proposition that a general denial with adequately stated affirmative defenses is a defective pleading.

Govt Code § 815.6.” This argument fails to recognize that the order partially granting her motion for judgment on the pleadings concerned the deficiencies in the City’s pleading, not the merits of her own pleading. The order did not imply a finding that Agardi’s complaint stated a claim upon which relief can be granted; in fact, the order preserved the City’s affirmative defense that the complaint did not state such a claim and the City had every right to raise that defense later in the proceedings, which it did. Even less was the order and adjudication on the merits of Agardi’s complaint.

Agardi, relying on her belief that the December 7, 2010 order supported the merits of her complaint, characterizes this order as being at odds with the court’s April 19, 2011 grant of the City’s motion for judgment on the pleadings. However, these two orders were not at odds because the first addressed the deficiencies, raised by Agardi, in the City’s answer, and the second addressed deficiencies in Agardi’s complaint, raised by the City. There are no grounds for Agardi to assert that simply by being the first to file a motion for judgment on the pleadings, and receiving a partial grant to that motion, the City would be foreclosed from filing its own motion for judgment on the pleadings, and from prevailing on that motion.

Continuing her misunderstanding of the import of the December 7, 2010 order, Agardi believes that the April 19, 2011 order modified the prior order and argues that such a modification was improper because it was made by a different judge sitting in the law and motion department of the Superior Court. Because the second order did not modify the first, this argument fails.

II. Agardi’s Motion for Entry of Final Judgment

Agardi argues that the court committed procedural error by failing to hold a hearing on her motion for entry of final judgment. However, the register of actions in the Superior Court indicates that a hearing was held on this motion, along with Agardi’s motion to strike the City’s amended answer and other motions, on April 19, 2011. The court’s April 19, 2011 order denied the motion.

Agardi also argues that she was prejudiced because the hearing date for her motion for entry of final judgment was continued from March 7, 2011, to March 24 and then to

April 19. Nothing in the record supports an imputation of bad faith in the requests for or grants of these continuances. Moreover, because Agardi was not entitled to an entry of final judgment, as explained above, she suffered no prejudice.

III. *The Court did not Err in Treating Agardi's Filings as Opposition Papers*

Agardi did not file an opposition to the City's motion for judgment on the pleadings. Instead, she filed a special demurrer to the motion and a motion to strike the motion. At the April 19, 2011 hearing, the court treated these filings as opposition papers. Agardi argues prejudicial error in so treating her filings.

A motion to strike is made with regard to a pleading. (Code Civ. Proc., § 435.) Because a motion for judgment on the pleadings is not itself a pleading, a motion to strike is not properly filed in response to a motion for judgment on the pleadings. Similarly, a demurrer is made in response to pleadings, not to motions. (Code Civ. Proc., § 430.30.) In the absence of an opposition from Agardi to the City's motion for judgment on the pleadings, the court could have precluded argument from Agardi at the hearing. (Super. Ct. S.F. County, Local Rules, rule 12.40.) By regarding Agardi's improper filings as opposition papers, the court was able to consider the arguments they contained in opposition to the City's motion, and forestalled an argument from the City that the court should not permit Agardi to argue against the motion at the hearing. By construing Agardi's filings as opposition papers, the court benefitted Agardi and she suffered no prejudice.

IV. *The Grant of the City's Motion for Judgment on the Pleadings*

On April 19, 2011, the court granted the City's motion for judgment on the pleadings, stating in its order: "The entirety of Agardi's complaint depends on her argument that the City is obligated to provide [G.A.] benefits in the form of cash. This argument is foreclosed by numerous appellate decisions, including *Hunt v. Superior Court*, 21 Cal.4th 984, 992 (1999), *Bell v. Board of Supervisors of Alameda County*, 23 Cal.App.4th 1695, 1706 (1994), and *McMahan v. City and County of San Francisco*, 127 Cal.App.4th 1368, 1379 (2005). Because Agardi has not identified (nor could she

identify) how she could amend her complaint to survive another motion for judgment on the pleadings on this legal question, the motion is granted without leave to amend.”

A. *Standard of Review*

A trial court’s grant of a motion for judgment on the pleadings is reviewed de novo. (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 166.) “Accordingly, for purposes of this opinion, we treat the properly pleaded allegations of [plaintiff’s] complaint as true, and also consider those matters subject to judicial notice. [Citations.]” (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1232.) The allegations in the complaint must be liberally construed, “with a view to substantial justice between the parties.” (Code Civ. Proc., § 452; *Guild Mortgage Co. v. Heller* (1987) 193 Cal.App.3d 1505, 1508.) “Our primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory. [Citations.]” (*Guild Mortgage Co.*, at p. 1508.)

B. *The Alleged Facts and Causes of Action under Review*

In her opening brief, Agardi states, “In the meantime the rest of the causes of action pertaining to housing claims and third party beneficiary became moot. Appellant does not wish to pursue those causes.” In her reply brief, she also makes clear that she is pursuing only the first three causes of action stated in her complaint. Accordingly, we limit our review to the first three causes of action and the facts alleged in support of those causes of action.

C. *The First Cause of Action*

Agardi’s first cause of action was captioned “FAILURE TO DISCHARGE MANDATORY DUTY” and was described as follows: “Under existing state law the [City] has the mandatory duty to pay up to \$395 cash benefit to [G.A.] recipients in which the City failed to do so. The City issues the [G.A] checks to third parties.” Agardi alleged, earlier in the complaint, that her G.A. benefit was issued as a “two-party check,” payable to her and THC. She explained that she had to endorse the check and turn it over to THC. THC then retained the larger portion of the benefit in return for housing provided to Agardi, returning the remainder to her in a check issued by THC.

Section 17000.5, subdivision (a), explicitly permits counties to include the value of in-kind services when administering a general assistance standard of aid. “[A] county may satisfy its statutory obligation to support and relieve the indigent by providing in-kind aid such as food and shelter, and may reduce general assistance grant levels by the value of in-kind aid that is actually made available.” (*Hunt v. Superior Court, supra*, 21 Cal.4th at p. 992; see also *Bell v. Board of Supervisors, supra*, 23 Cal.App.4th at p. 1706 [upholding a county ordinance which, like Proposition N, reduced cash payments to G.A. recipients based on the value of the shelter that the county provided].) This court has upheld the portion of Proposition N “that requires San Francisco to provide indigents with direct services instead of cash” (*McMahan v. City and County of San Francisco, supra*, 127 Cal.App.4th at p. 1379.)

Agardi argues that Proposition N was a “homeless assistance ordinance” that is unrelated to San Francisco’s obligations under section 17000. This argument is untenable because the text of Proposition N refers, on its face, to San Francisco’s G.A. program, and is primarily implemented via revisions to the provisions in the San Francisco Administrative Code that implement San Francisco’s G.A. program. Moreover, this court has previously recognized the connection between Proposition N and the City’s obligations under section 17000. (See *McMahan v. City and County of San Francisco, supra*, 127 Cal.App.4th at pp. 1370-1371; *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 238-239.)

Agardi also argues that county G.A. provisions may only be enacted by the Board of Supervisors and not by a proposition approved by voters. This argument was rejected in *Pettye v. City and County of San Francisco, supra*, 118 Cal.App.4th at pages 240-248.

In addition, Agardi attacks Proposition N by arguing that it violates the single-subject rule of the California Constitution. (Cal. Const., art. II, § 8, subd. (d) [“An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.”].) She claims that the reduction in cash benefits and the provision of housing to the homeless are unrelated subjects in Proposition N. An initiative may have “ ‘ ‘ ‘varied collateral effects’ ’ ’ ” without violating the single-subject rule, so long as its

parts are “ ‘ ‘ ‘ “reasonably germane” ’ ’ ’ ” to each other and to the initiative’s general purpose. (*Senate of State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1157; *California Family Bioethics Council LLC v. California Institute for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1340, italics omitted.) Here, Proposition N’s reduction in cash benefit is intimately related to the provision of housing, because it is the provision of housing that ensures that the total value of the benefits provided to a G.A. recipient is not reduced. Both of these provisions facially support the stated purpose of Proposition N, which is “to provide all homeless San Franciscans without dependents, who qualify for aid through the County Assistance Programs, food, shelter/housing and health services replacing the majority of existing cash programs with these guaranteed services.” We find no basis in Agardi’s arguments to conclude that Proposition N violates the single-subject rule.

Agardi argues that before a county can reduce the benefits provided to G.A. recipients, “they have to file a written petition to the State Commission on Mandate and they have to prove that they are so broke that they cannot pay.” However, Agardi has not alleged that the value of the benefit that G.A. recipients receive has been reduced. She has merely alleged that what was formerly a cash benefit has been replaced by a benefit that is a mix of cash and in-kind services. Because section 17000.5 explicitly provides that such a mix is permissible, this argument fails as well.

Finally, Agardi argues that when a benefit that is provided to G.A. recipients is funded by charitable donations, the value of that benefit may not be deducted from the G.A. benefit as an in-kind service. Further, she argues that she turns over a portion of her G.A. benefit to THC for housing and that this should count as a charitable donation to THC. Ergo, her argument goes, her housing is funded by a charitable donation and cannot be deducted as an in-kind service. What Agardi turns over to THC is a check from the City that is payable to Agardi and THC. Because the check is already payable to THC when Agardi receives it, it is not a charitable donation by her to THC.

We conclude, as did the court below, that the law forecloses Agardi from arguing that she must be paid her full benefit in cash. Agardi has also failed to advance an

alternate legal theory that demonstrates that, had she been given the opportunity to amend her complaint, she could have done so in a way that would survive a subsequent motion for judgment on the pleadings. Accordingly, we affirm the court's grant of judgment on the pleadings without leave to amend as to the first cause of action.

D. The Second Cause of Action

Agardi's second cause of action was captioned "FAILURE TO DISCHARGE MANDATORY DUTY ON COUNT TWO. VIOLATIONS OF EBT TRANSFER LAWS" and was described as follows: "Failure to discharge mandatory duty imposed by existing state law. Under this law the City has to forward the cash assistance to the General Assistance recipient's EBT card. The City failed to do so." The alleged facts that support the first cause of action also support this cause of action.

In its brief,⁵ the City characterizes this cause of action as no different from the first, except that it includes a more specific allegation. If we read this cause of action in the same way, then the reasoning above as to the first cause of action would apply to the second as well. However, we must construe the complaint liberally and an alternate reading of the second cause of action would be that, whether or not the full G.A. benefit is paid to the recipient, the portion that is paid in cash must be disbursed via the EBT card. This would be a cause of action distinct from the first. However, even though Agardi states that payment through an EBT card is required by law, she never identifies the applicable law. The provisions of the Welfare and Institutions Code that govern G.A. (Welf. & Inst. Code, § 17000 et. seq.) make no reference to the use of an EBT system. Nor does the Electronic Benefits Transfer Act (Welf. & Inst. Code, § 10065 et. seq.)

⁵ Agardi urges us to disregard the City's brief because she alleges that it was not timely filed. When the City failed to file its brief within 30 days after Agardi filed her brief, the clerk of the court sent the City a letter on November 29, 2011, warning that the City had 15 days in which to file its brief, unless the City showed good cause for a further extension. (Cal. Rules of Court, rules 8.212(a)(2) & 8.220(a).) The City then filed its brief on December 8, 2011, within the 15 days noticed by the Clerk. Agardi also urges that various portions of the City's brief be disregarded because she alleges "mistakes and irrelevancy." Such problems may result in the brief being unconvincing, but we do not disregard the brief.

impose a requirement that an EBT system be used to disburse G.A. benefits. Agardi fails to state a claim under either reading and we affirm the court’s grant of judgment on the pleadings, without leave to amend, as to the second cause of action.

E. The Third Cause of Action

Agardi’s third cause of action was captioned “Fraud” and advances a complex argument to the effect that Proposition N deceived voters into believing that non-profit housing would be provided to the homeless, when in fact “commercial hotels” were among the housing provided. However, Proposition N, amending San Francisco Administrative Code, section 20.57.1, defines “ ‘housing’ ” to “include, but not be limited to, single occupancy residential hotels, master lease rooms, transitional housing, supportive housing programs, residential treatment facilities, shelter.” (Italics omitted.) The text of the proposition is silent as to the for-profit or non-profit status of “housing.” Because the nature of the deception that Agardi alleges cannot be found in the text of Proposition N, we affirm the court’s grant of judgment on the pleadings, without leave to amend, as to the third cause of action.

DISPOSITION

The judgment is affirmed.

Lambden, J.

We concur:

Kline, P.J.

Haerle, J.