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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

PATRICIA HEWLETT,

Plaintiff and Appellant,

v.

CHASE BANK USA N.A. et al.,

Defendants and Respondents.

A134224

(San Mateo County
Super. Ct. No. CIV490949)

Patricia Hewlett sued her mortgage lender, Chase Bank USA N.A.—Home Finance LLC¹ (“Chase”). Chase successfully demurred to Hewlett’s complaint as “uncertain.” After granting Hewlett two additional chances to file a viable complaint, the court sustained Chase’s demurrer to her second amended complaint without leave to amend and entered judgment against her. She appeals, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Hewlett filed a complaint against Chase in San Mateo Superior Court on December 31, 2009. Chase demurred on April 22, 2010. Hewlett did not file a timely opposition, but rather belatedly requested an extension of time to obtain counsel. On June 7, 2010, the trial court sustained the bank’s demurrer. It found the complaint uncertain—that is, ambiguous or unintelligible—under Code of Civil Procedure

¹ Chase Bank USA N.A. was erroneously sued. The current, proper defendant is apparently JPMorgan Chase Bank, N.A.

section 430.10, subdivision (f),² and, with respect to the “apparent claim for breach of contract,” further found the complaint did not specify whether plaintiff was alleging a written, oral, or implied contract, as required under section 430.10, subdivision (g). It also found the complaint did not comply with California Rule of Court, rule 2.112,³ which requires separate causes of action to be numbered and named. The trial court, however, granted Hewlett leave to amend within 45 days in view of Hewlett’s desire to obtain counsel.

Hewlett, still representing herself, filed an amended complaint on July 19, 2010. Chase again demurred. Although Hewlett filed an opposition this time, the trial court, on January 11, 2011, also sustained this demurrer based on section 430.10 and rule 2.112. The trial court gave Hewlett 30 days to file a complaint compliant with rule 2.112 and formatted such that “[e]ach cause of action” is “set forth separately, and separately supported by relevant allegations.”

On February 15, 2011, Hewlett filed her second amended complaint (mislabeled as her first amended complaint).

The second amended complaint does not contain separated causes of action and does not comply with rule 2.112. It does allege Hewlett obtained a mortgage loan from Chase in December 2007 for a condominium in San Bruno. Hewlett then alleges Chase violated two federal laws, the Equal Credit Opportunity Act, title 15 United States Code section 1691 et seq. and the Fair Housing Act, title 42 United States Code section 3601 et seq., by giving her a “higher-price” loan than similarly situated non-minorities (Hewlett alleges she is Hispanic). She also alleges a “Trial Modification” agreement appears to permit Chase the right to deny final modification and proceed with foreclosure without stating any grounds. This, she says, constitutes “Unfair Business Practices” and “Improper Denial of Loan Modification.”

² All further statutory references are to the Code of Civil Procedure unless indicated.

³ All further rule references are to the California Rules of Court.

Chase, viewing this pleading as little changed, interposed a demurrer on March 16, 2011, reasserting its uncertainty argument. At the hearing set for June 21, 2011, at which Hewlett appeared, the trial court noted Hewlett had not filed an opposition and continued the hearing until August 9, 2011. On August 8, 2011, the court issued a tentative ruling sustaining Chase's demurrer, this time without leave to amend. It again cited a failure to comply with section 430.10 and rule 2.112. Hewlett did not contest the tentative ruling or appear at the scheduled hearing, and the court adopted its tentative ruling on August 9, 2011.

Meanwhile, the trial court had assigned the case to arbitration. After Hewlett sought a 60-day continuance, the arbitration was set for August 2, 2011. Hewlett did not submit briefs to the arbitrator and did not appear. The arbitrator, on August 3, 2011, entered an award in favor of Chase.

On August 24, 2011, Hewlett filed a motion to vacate the arbitrator's award and tentative ruling on the demurrer. She asserted she and Chase had agreed to delay the arbitration and Chase had not properly served her with the demurrer. Chase responded that Hewlett's remedy, if she disagreed with the arbitration result, was to seek a trial de novo, which she had not done, and that a motion to vacate was not an allowed remedy. Chase also argued it properly served its demurrer and that Hewlett's motion to vacate the arbitration award was moot in light of the trial court's August 9, 2011, ruling on the demurrer, effectively ending the case. The trial court denied Hewlett's motion, stating there was no evidence she had not been served with the demurrer and that the request to vacate the arbitration award was moot.

The trial court entered judgment in favor of Chase on November 4, 2011.

On December 27, 2011, Hewlett filed a notice of appeal from the judgment of dismissal and the "award of arbitrator without arbitration being conducted. Rule 3.825." She has provided a record on appeal consisting of only a 36-page clerk's transcript and a six-page reporter's transcript. She did not include any of her three complaints or the briefs on the demurrers. Only because Chase moved to augment the record do we have access to those materials.

DISCUSSION

When the trial court dismisses a case after sustaining a demurrer without leave to amend, we ordinarily “review the complaint de novo to determine whether it contains facts sufficient to state a cause of action under any legal theory” and, if the complaint is lacking, “we then consider whether the court abused its discretion in denying leave to amend the complaint.” (*Estate of Dito* (2011) 198 Cal.App.4th 791, 800.) In this case, however, there are significant defects in Hewlett’s record preparation and briefing on appeal. In addition, she has not offered any argument supporting the substance of her complaint, nor requested a chance to amend her pleading, nor specified changes she would make to it if given the chance.

Hewlett’s Burden As Appellant

To prevail on appeal, an appellant must, as a threshold matter, present an adequate record for review. (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.) Lower court judgments are presumed correct. Without a record of what actually occurred before the trial court, an appellate court cannot say whether the trial court erred. (*Ibid.*) An appellant must also support assertions of fact made in the briefing with citation to the record. (Rule 8.204(a)(1)(C); *In re Marriage of Goosmann* (1994) 26 Cal.App.4th 838, 841, fn. 1 (*Goosmann*); *Schubert v. Reynolds* (2002) 95 Cal.App.4th 100, 109 (*Schubert*)). Although the record may be augmented during the course of an appeal to include materials necessary for review, augmentation “ ‘is not to be regarded as a cure-all nor as an assurance that negligent preparation of the record will entail no harmful results.’ ” (*Russi v. Bank of America National Trust & Savings Assn.* (1945) 69 Cal.App.2d 100, 102.) Thus, if an appellant’s briefs do not reference the augmented material, those briefs are defective (*Goosmann, supra*, 26 Cal.App.4th at p. 841, fn. 1), and appellant has not met her obligation to provide citation to the record (*Schubert, supra*, 95 Cal.App.4th at p. 109).

Further, an appellant has the burden of establishing error through reasoned arguments, not conclusory assertions. (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1215 [“Contentions are waived when a party fails to support them

with reasoned argument.”]; cf. *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1265 [rejecting argument raised in conclusory fashion].) We need not consider points unsupported by legal analysis or authority. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3.) Nor need we consider points supported by citation to general legal principles or legal authority without application of those principles or authorities to the case at hand. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699 [“plaintiffs . . . cit[e] only general principles governing [reconsideration] . . . motions without applying those principles to the circumstances before the court”].) “When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived [forfeited].” (*Badie v. Bank of America, supra*, 67 Cal.App.4th at pp. 784-785.)

Additionally, an appellant must not only show how the trial court erred, but how its error was prejudicial. (*Century Sur. Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963.) “[W]e cannot presume prejudice and will not reverse the judgment in the absence of an affirmative showing there was a miscarriage of justice. (Cal. Const., art. VI, § 13; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 . . . ; *Taylor v. Varga* [(1995)] 37 Cal.App.4th [750,] 759.) Nor will this court act as counsel for appellant by furnishing a legal argument as to how the trial court’s ruling was prejudicial. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 544-546 . . . ; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, p. 627.)” (*Ibid.*; see also *Kyne v. Eustice* (1963) 215 Cal.App.2d 627, 635-636 [requiring affirmative showing of prejudice from appellant to reverse order sustaining demurrer].)

Hewlett has not met these burdens. To start, she prepared a record that excluded her complaints and the briefing on Chase’s demurrers. Compounding this failure, neither of her appellate briefs—not even her reply brief—cited to these materials, which Chase (for reasons not evident) eventually furnished to the court as part of an augmented record.

Then, although Hewlett cites a plethora of legal authority, her arguments are sweeping and conclusory, and inadequate to meet her burden on appeal. (*Moulton Niguel Water Dist. v. Colombo, supra*, 111 Cal.App.4th at p. 1215.) For instance, she cites *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616, for the general legal rule that “[a] demurrer for uncertainty is strictly construed” but says nothing about how *her complaint* relates to this rule. As another example, Hewlett claims “Judge Bergeron’s Arbitration Order is inconsistent with California statutory and case law” and then quotes—in one, five-page, single-spaced footnote—the language of numerous California statutes without any explanation or analysis. Additionally, she has made broad brush allegations—such as “Judge Bergeron has misrepresented facts” or “Judge Bergeron’s Demurrer Order contains improper factual allegations”—without pointing to any supporting evidence or even suggesting the legal significance of these claims.

Finally, Hewlett has not shown prejudice from the trial court’s ruling. Although she accuses the trial court of error, she has not shown the decision was, ultimately, a wrong one. (*Estate of Beard* (1999) 71 Cal.App.4th 753, 776 [“there can be no prejudicial error from erroneous logic or reasoning if the decision itself is correct”].) Simply put, she has made no effort to show her complaint actually stated any valid cause of action for relief, nor has she made an argument as to how she complied with the various requirements for specificity the rules and trial court imposed on her. Nor has she even remotely suggested how she might cure the defects in her complaint if given a chance to amend. (See *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 444 [failure to provide a proposed amendment or advance on appeal any allegation that might cure the defects in amended complaint supports the trial court’s order denying leave to amend]; *Taliaferro v. Prettner* (1955) 135 Cal.App.2d 157, 160 [“when, as here, the court reasonably concludes that the plaintiff has made no real effort to comply with the permission once given him to amend his complaint, the amended complaint becomes nothing but a sham. The court is not required to give him another opportunity”].)

For all these reasons, we conclude Hewlett has not met her burden to demonstrate reversible error. For this reason, alone, the judgment must be affirmed.

Other Issues

As best we can discern them, we also address other issues raised by Hewlett.

Hewlett quotes section 473, which states: “The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (§ 473, subd. (b).) But an “[a]pplication for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted.” (*Ibid.*) Hewlett’s August 24, 2011, motion to vacate the tentative ruling on the demurrer did not attach a further amended pleading. Thus, even if we construed Hewlett’s motion as one under section 473, it failed to meet that section’s requirements. Thus, the trial court could not have abused its discretion to deny relief under that section.⁴ (See *Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410 [abuse of discretion standard].)

This case does not implicate a statute of limitations issue, nor a cause of action for fraud. Therefore Hewlett’s citation to *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 and *Nelson v. Indevus Pharmaceuticals, Inc.* (2006) 142 Cal.App.4th 1202, 1206 (statute of limitations) as well as Civil Code section 1709 and *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167 (fraud) are inapposite.

Nor does this case involve the trial court improperly finding facts at the demurrer stage or improperly taking judicial notice of a document. The trial court repeatedly declined to take judicial notice of documents, because it did not base its ruling on the existence or contents of those documents. The trial court’s decision to sustain Chase’s demurrer was not based on the finding of facts, but on the uncertainty of Hewlett’s successive complaints and Hewlett’s failure to head the court’s straightforward instructions for how to file a complaint that satisfied rules of pleading.

⁴ Nor could Hewlett’s motion have succeeded as a section 1008 motion for reconsideration. A party may seek reconsideration of an order based on new facts, circumstances, or law that, for good reason, could not have been presented before. (§ 1008, subd. (a); *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.) Based on the record, none of these circumstances were present in this case.

As to Hewlett’s constitutional contentions, she was not deprived of due process, but given the opportunity to be heard on her claims in a California Superior Court. The processes of the superior court were adequate. (See *Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 543 [“Due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”].) She was not deprived of property in violation of the federal takings clause in the Fifth Amendment, because Chase is not a government entity and the government did not take any property from her. (Cf. *U.S. v. \$186,416.00* (9th Cir. 2010) 590 F.3d 942, 945 [concerning “\$186,416.00 in U.S. currency seized by officers of the Los Angeles Police Department”].) Nor is there any valid separation of powers concern in the Superior Court exercising its ordinary judicial function.

Finally, since we are affirming the judgment dismissing Hewlett’s lawsuit, we agree with Chase that her motion to vacate the arbitration award in favor of Chase is moot. The courts have resolved Hewlett’s claims in favor of Chase, mirroring the arbitration result. Hewlett suggests no purpose that would be served by reviewing the arbitration decision.

DISPOSITION

The judgment is affirmed. Respondents to recover costs on appeal.

Banke, J.

We concur:

Marchiano, P. J.

Dondero, J.