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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

RAYMOND B. SIMMONS,
Plaintiff and Appellant,

v.

SAN FRANCISCO HOUSING
AUTHORITY,
Defendant and Respondent.

A136076

(San Francisco City & County
Super. Ct. No. CGC-10-501254)

The trial court sustained respondent San Francisco Housing Authority's (housing authority) demurrer without leave to amend to appellant Raymond B. Simmons's amended complaint stemming from a third party incident. Simmons appeals¹ the resulting judgment of dismissal, apparently contending that the trial court abused its discretion in sustaining the demurrer. We dismiss part of his purported appeal and affirm the judgment.

¹ Simmons filed a timely notice of appeal from the June 7, 2012 judgment. He also purports to appeal from an order denying his second motion to set aside the judgment. However, he makes no argument in his briefs pertaining to the order denying his motion to set aside the judgment. Thus, he has waived this aspect of his appeal, which we dismiss. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; see *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119 [failure to argue in opening brief deemed abandonment of appeal]; see also 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 701, pp. 769-771.)

I. FACTS

On April 9, 2010, an incident occurred near the home of appellant Raymond B. Simmons. A police report on the incident stated that a fight occurred between two men in the yard in front of Simmons's residence. Simmons—who had a strong odor of alcohol on his breath—was “very uncooperative” and refused to explain what made him feel threatened by the other man. Simmons told police that he was not afraid of the other man. Broken beer bottles were seen in front of Simmons's house. The other man reported that Simmons was yelling at him and had followed him to his mother's house. The other man retrieved a baseball bat from the house, but did not use it or threaten to do so. Neighbors told police that the altercation was mutual and the property manager observed the lack of cooperation from the involved parties.²

In May 2010, Simmons filed a claim against the housing authority for \$3 million in damages for emotional distress.³ The claim apparently included an attachment explaining an April 9 incident in which a white male—whom Simmons suspected of being under the influence of drugs—approached him with a baseball bat as Simmons was entering his residence. As Simmons closed the gate to his doorway, the white male struck the gate with the bat, knocking the gate into Simmons and his bag of groceries. The police intervened, removing the white male. According to Simmons, a housing authority office manager witnessed these events. He reasoned that the housing authority knew or should have known of the assailant's “previous offenses” and failed to evict him. He claimed that the housing authority was negligent for failing to do so. In June 2010, the housing authority denied his claim.

In July 2010, Simmons filed an action against the housing authority, alleging causes of action for racial discrimination, emotional distress, negligence, being the victim

² Several years earlier, Simmons had made complaints to the housing authority about being the target of harassment and threats.

³ Simmons supported his claim with a letter from a doctor recounting his concern about the incident and reporting that he felt unsafe in his neighborhood, partly because the neighbor continued to live nearby and continued to taunt him.

of a hate crime, and trespassing/home invasion. The complaint alleged few facts, other than that another tenant had assaulted Simmons with a baseball bat at the door of his residence. It did not allege the date of the incident or the name of the third party. The various causes of action were little more than a bare assertion of a claim. Simmons alleged that the housing authority was responsible for these third party acts and sought \$5 million in compensatory damages and \$1 million in punitive damages.

The housing authority demurred to the complaint in September 2010. Simmons responded to the demurrer by claiming that his damages for emotional distress had risen \$500,000. In November 2010, the demurrer was sustained on all causes of action with leave to amend. An order sustaining the demurrer was filed in March 2011.

The housing authority also moved to strike Simmons's claim for punitive damages in September 2010. In November 2010, the trial court granted the motion to strike without leave to amend. An order memorializing this ruling was filed in March 2011.

Meanwhile, Simmons filed a first amended complaint in December 2010. The amended complaint added factual allegations that were missing from the original complaint, but did not include any additional allegations to support what were essentially the same causes of action that he alleged in his original complaint. He prayed for \$10 million in compensatory damages. In January 2011, the housing authority demurred to this amended complaint. In February 2011, this demurrer was sustained without leave to amend. An order sustaining the demurrer to the first amended complaint was filed in September 2011.⁴ Notice of entry of this order was given in September 2011.

In January 2012, the trial court set an order to show cause hearing to determine why the housing authority had not yet filed a judgment in this matter. In February 2012, the housing authority again gave notice of entry of the order sustaining the demurrer, but did not prepare a judgment. In March 2012 and again in May 2012, Simmons filed

⁴ Simmons filed two premature appeals in this matter, challenging two trial court orders sustaining the housing authority's demurrers to his complaints. As no judgment had yet entered, each appeal was dismissed. (*Simmons v. San Francisco Housing Authority*, A131913 & A133480.)

motions to set aside the judgment. Those motions were denied, in part because no judgment had been filed at the time that the motion were made. In June 2012, judgment was entered in favor of the housing authority. On June 15, 2012, Simmons appealed from this judgment.⁵

II. DEMURRER

A. *Failure to Argue on Appeal*

Simmons appears to argue that the trial court erred by sustaining the housing authority's demurrer to his amended complaint. On appeal, we begin with the presumption that the trial court's decision was correct. As the appellant, Simmons has an affirmative duty to demonstrate that it was incorrect. This is not simply a principle of appellate practice, but an ingredient of the constitutional doctrine of reversible error. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Shepherd v. Greene* (1986) 185 Cal.App.3d 989, 994.) He has not done so.

In his briefs, Simmons cites no statutory or case authority to support his claims of error. An appellant must support a claim on appeal with reasoned argument or citations to authority or risk having the claim of error waived. (*Badie v. Bank of America, supra*, 67 Cal.App.4th at pp. 784-785; see 9 Witkin, Cal. Procedure, *supra*, Appeal, § 701, pp. 769-771.) Simmons's briefs set forth no intelligible legal argument stating how the allegations of the first amended complaint are sufficiently specific to state causes of action for racial discrimination, emotional distress, negligence, hate crime, or trespass. Under these circumstances, we may deem the claim to be waived. (See, e.g., *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545.)

⁵ Three days later, Simmons petitioned the trial court for reconsideration of the June 2012 order of dismissal, apparently referring to the June 2012 judgment. In July 2012, that motion for reconsideration was denied because of the pendency of this appeal.

B. *Insufficiency of First Amended Complaint*

Even if he could overcome this procedural hurdle, Simmons would not prevail on the merits of his appeal. A demurrer raises no *factual* issues, but assumes the facts alleged in the complaint to be true.⁶ On appeal, we interpret the complaint in a reasonable manner. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 319; *Morgan v. AT&T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1252.) Simmons's first amended complaint alleges facts, but does little more than label causes of action as racial discrimination, emotional distress, negligence, being the victim of a hate crime, and trespass. The failure to allege the factual elements of these various causes of action renders the first amended complaint deficient because it does not offer sufficient particularity to acquaint the housing authority—or this court—with the nature, source and extent of his causes of action. (See *Alch v. Superior Court* (2004) 122 Cal.App.4th 339, 382.) Having conducted an independent review of the bare assertions Simmons made in his first amended complaint, we conclude that the complaint does not state facts sufficient to constitute a cause of action. (See *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125; *Bardin v. DaimlerChrysler Corp.* (2006) 136 Cal.App.4th 1255, 1264.)

⁶ For this reason, we denied Simmons's motion to consider evidence in support of his evidentiary claims.

The purported appeal from the order denying his motion to set aside the judgment is dismissed, as abandoned. The judgment of dismissal is affirmed.

REARDON, J.

We concur:

RUVOLO, P. J.

RIVERA, J.