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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

PATRICIA KVAM,

Plaintiff and Appellant,

v.

JPMORGAN CHASE BANK N.A. et al.,

Defendants and Respondents.

A139269

(Marin County

Super. Ct. No. CIV11033315)

Patricia Kvam appeals from a judgment entered after the court granted motions to strike her complaint and for judgment on the pleadings in favor of JPMorgan Chase Bank, N.A. (Chase Bank), and California Reconveyance Company (CRC), respectively the beneficiary and trustee under the deed of trust securing her mortgage loan.¹ She asserts the court erred when it granted Chase's motion for judgment on the pleadings because her amended complaint adequately alleged causes of action for declaratory relief, negligence, unfair business practices, quiet title, fraud and deceit, breach of the implied covenant of good faith and fair dealing, and promissory estoppel. However, she has not addressed the ruling granting the accompanying motion to strike the amended complaint and dismiss the action. The trial court properly granted that motion, so we affirm the judgment.

¹For brevity, we shall refer to defendants jointly as Chase.

BACKGROUND

In March 2007 Kvam obtained a mortgage loan from the Washington Mutual Bank secured by a deed of trust on her property.² The deed of trust named Washington Mutual as the lender and beneficiary and CRC as the trustee. Chase Bank subsequently acquired Washington Mutual's interest in the loan.

Kvam defaulted on her mortgage payments, and CRC recorded a notice of default and election to sell under the deed of trust. Between July 2009 and May 2011 CRC recorded three notices of trustee's sale.

Kvam sued Chase in July 2011, primarily under theories that the bank lacked standing to foreclose due to alleged improprieties in the handling of her mortgage documents and various acts of fraud and negligence in originating and, later, failing to modify her loan. The complaint included causes of action for injunctive and declaratory relief, promissory estoppel, breach of the implied covenant of good faith and fair dealing, negligence, intentional and negligent misrepresentation, unfair business practices, deceit, and quiet title.

Chase successfully moved for judgment on the pleadings. The court denied leave to amend as to Kvam's causes of action for declaratory relief, breach of the implied covenant of good faith and fair dealing, concealment of material facts, and quiet title, but permitted Kvam to amend her causes of action for promissory estoppel, negligence, intentional and negligent misrepresentation, promissory fraud, and unfair competition. Kvam was ordered to file an amended complaint within 20 days from notice of entry of the court's order. Notice of entry was served by mail November 26, 2012, triggering a December 21, 2012 filing deadline.

In a January 9, 2013 case management statement, Chase stated its intention to seek dismissal for failure to timely file an amended complaint. Kvam filed an amended

²We previously granted Chase's July 30, 2014 motion to augment the record with documents filed in the trial court but omitted from the clerk's transcript. The bank's motion for judicial notice filed the same date is denied as unnecessary for resolution of this appeal.

pleading (erroneously captioned “Second Amended Complaint”) on January 18. Chase moved to strike the entire complaint as untimely (Code. Civ. Proc., § 436)³ and dismiss the action, alternatively, to strike the quiet title claim because the court had not granted leave to amend it. At the same time, the bank moved for judgment on the pleadings on the grounds the amended complaint was untimely and, alternatively, that it failed to state facts sufficient to state a cause of action.

The court granted both motions. As to the motion to strike, it ruled: “It is undisputed that Plaintiff did not file the amended pleading until *January 18, 2012*, almost four weeks after the due date of December 21, 2012. This was in violation of the court’s order granting Plaintiff 20 days to file the amended pleading following notice of entry of the prior order granting the prior motion for judgment on the pleadings,” and Kvam’s counsel failed to demonstrate excusable neglect under section 437, subdivision (b). The court also struck Kvam’s cause of action for quiet title because Kvam had not been granted leave to amend it.

The court also found Kvam had failed to plead facts sufficient to state a single valid cause of action. Accordingly, it granted judgment on the pleadings as to the entire complaint, without leave to amend. Kvam filed this timely appeal from the “[j]udgment of dismissal after order granting judgment on pleadings (Civ. C § 438).”

DISCUSSION

Both parties have extensively briefed the trial court’s ruling on the motion for judgment on the pleadings. We have no occasion to address those arguments, because the court properly granted Chase’s motion to strike the complaint for failure to file an amended pleading within the time ordered. Kvam did not identify that order in her notice of appeal and, more critically, has not addressed it in her briefs in this 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.” (*Badie v. Bank of America* (1998) 67 Cal. App. 4th 779, 784–785; see *Tiernan v. Trustees of Cal. State University &*

³Further statutory citations are to the Code of Civil Procedure.

Colleges (1982) 33 Cal.3d 211, 216, fn. 4; *San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th 523.) Kvam's complete failure to address the order striking her amended complaint as untimely warrants such treatment here.⁴

In any event, the record discloses no basis to disturb the court's discretionary decision not to relieve Kvam from the consequences of her late filing. Under section 473, subdivision (b), "[t]he 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."⁵ But a party seeking relief on that basis, as did Kvam, "bears the burden of demonstrating that the neglect was excusable in order to secure relief. [Citation.] The test of whether neglect is excusable is whether ' "a reasonably prudent person under the same or similar circumstances" might have made the same error.' " (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1128.)

Here, Kvam attributed the late filing to "an oversight by counsel . . . as a result of the Holiday season and other demands" and described it as a "onetime (*sic*) event that was simply a matter of miscalendering the date of the Amended Complaint," not part of a repeated failure to comply with the court's orders. But Chase observed that Kvam had repeatedly failed to serve timely briefs and violated rules of court by filing oversized and otherwise noncompliant papers, and that she "continue[d] to allege issues relating to securitization of the loan, which was already rejected" by the court. Moreover, counsel's

⁴We need not request supplemental briefing from the parties to conclude that Kvam abandoned any appeal of the order striking the complaint. Government Code section 68081 requires that we provide such an opportunity when we decide a case on an "issue" not raised by the parties. It does not direct that we allow a party to file a supplemental brief challenging an independent basis for the judgment waived in the first instance by failure to contest it in the opening brief.

⁵Kvam has never suggested, appropriately, that the *mandatory* relief provision of section 473, subdivision (b) was applicable in this situation. (See *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 615–620.)

extraordinarily vague explanation that his late filing was “a result of the Holiday season” and unspecified “other demands” was insufficient to satisfy his burden of demonstrating excusable neglect. (See, e.g., *Luri v. Greenwald*, *supra*, 107 Cal.App.4th at p. 1129; *Fairfield v. Ahlstrom* (1962) 206 Cal.App.2d 590.) “It is settled that an attorney’s occupation with other matters affords insufficient grounds to warrant relief under section 473, Code of Civil Procedure. As stated in *Willett v. Schmeister Mfg. Co.*, 80 Cal.App.337 . . . at page 340 : ‘Nor is unusual press of business a legal excuse. To accept this as a legal justification for failure to comply with the statute would be to discourage diligence in the prosecution of appeals and establish a precedent that might lead to vexatious delays.’ ” (*Fairfield v. Ahlstrom*, *supra*, 206 Cal.App.2d at p. 592.)

This record, which we have carefully reviewed, presents no basis for disturbing the court’s exercise of its discretion in rejecting Kvam’s purported excuse and striking the amended complaint. The deadline for filing an amended pleading having then long since passed, the action was properly dismissed.

DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.