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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

MARCIA GIUSTI,

Plaintiff and Appellant,

A140759

v.

**(San Francisco County
Super. Ct. No. CGC10504010)**

**BKCM ENTERPRISES, INC.,
et al.,**

Defendants and Respondents.

_____/

Plaintiff Marcia Giusti (plaintiff) sued numerous individuals and related corporations, claiming they conspired to operate a Ponzi scheme to borrow money with the false promise the loans were secured by deeds of trust.¹ The trial court granted defendants' motion for summary judgment, denied Giusti's reconsideration motion, and entered judgment for defendants.

Plaintiff appeals. She contends the court erred by: (1) excluding her timely-filed opposition evidence as inadmissible hearsay; (2) excluding opposition evidence she filed

¹ As relevant here, defendants are John Simonse, Magnate Fund #1 LLC, Magnate Fund #2 LLC, Magnate Fund # 3 LLC, JWS Capital Management, Inc., LHJS Investments LLC, 27th Street Associates LLC, South Van Ness Street Associates LLC, 20 Parkridge LLC, and 55 Woodward LLC (collectively, defendants). Various parties in the trial court are not parties to this appeal are mentioned only where necessary.

after the statutory deadline in Code of Civil Procedure section 437c, subdivision (b)(2); (3) granting summary judgment for defendants; and (4) denying her motion for reconsideration.

We deny defendants' motion to dismiss the appeal as untimely. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff is a real estate agent. From 2007 to 2009, she made at least eight loans totaling almost \$1.4 million to Benny Chetcuti, Jr. and his company, Chetcuti & Associates (collectively, Chetcuti). These loans were secured by Bay Area real property. Certain defendants also loaned money to Chetcuti and held liens on the same real property. Plaintiff's lawsuit concerns two loans totaling \$615,000 described below.

99 Cedro Avenue

In April 2007, defendants LHJS Investments, LLC and Magnate Fund #2 LLC (M2) loaned Chetcuti \$1.5 million to buy real property at 99 Cedro Avenue in San Francisco (99 Cedro). The loan on 99 Cedro was secured by first and second deeds of trust. In August 2007, plaintiff loaned Chetcuti \$350,000. A deed of trust on 99 Cedro secured plaintiff's loan. In 2008, Magnate Fund #3 LLC (M3) loaned Chetcuti an additional \$425,000 to complete construction on 99 Cedro. Plaintiff reconveyed the deed of trust on 99 Cedro to a third party. 99 Cedro was sold in June 2008 and plaintiff received \$134,250 in interest and principal on the loan secured by that property.

20 Parkridge Drive

In November 2007, M2 loaned Chetcuti \$670,000, secured by a deed of trust on a multi-unit building at 20 Parkridge Drive in San Francisco (20 Parkridge). A few weeks later, plaintiff loaned Chetcuti \$265,000, also secured by a deed of trust on the same property. M2 eventually foreclosed on the property when Chetcuti did not repay the loan. Plaintiff received \$160,400 in principal, interest, and penalties on the loan secured by 20 Parkridge.

The Operative Complaint

Plaintiff sued defendants for the "two loans . . . outstanding" on 99 Cedro and 20 Parkridge. The operative second amended complaint alleged claims for conspiracy,

intentional infliction of emotional distress, and declaratory relief. Plaintiff alleged Chetcuti and John Simonse operated a Ponzi scheme to borrow money — usually in the form of short term loans — by promising “high (and mostly usurious) returns.” According to plaintiff, Chetcuti signed promissory notes and issued “deeds of trust to his properties” to secure the loans. Before recording the lenders’ deeds of trust, however, Chetcuti issued and recorded deeds of trust in favor of Simonse and related entities on unfunded sham loans “that would totally encumber the property. . . . Simonse and his other entities would then foreclose on the properties, leaving the victims without any security for their loans,” and “Simonse and his entities would have free and clear title to the properties, without actually making any loans.” When “Chetcuti could not find enough investors to pay for various other loans, the scheme collapsed, leaving his victims with unpaid promissory notes with no security for their loans.” According to the operative complaint, Chetcuti defrauded at least 114 victims, who suffered an aggregate loss of \$28 million.

As relevant here, the operative complaint alleged: (1) plaintiff’s loans were not repaid; (2) Chetcuti made “false representations” he would repay the loans; (3) Chetcuti tricked plaintiff into signing the reconveyance for the deed of trust on 99 Cedro and lied when he promised to deliver the reconveyance to the title company; (4) Chetcuti lied about the encumbrances on, and the value of, 20 Parkridge, and he falsely represented plaintiff would hold the second deed of trust on that property; (5) Simonse created a shell company and M2 transferred title to 20 Parkridge to the shell company without consideration; (6) defendants “aided and abetted” in Chetcuti’s “false representations” by “making bogus ‘loans’” to Chetcuti “when the ‘loans’ were not really funded, to secure superior liens[;]” and (7) plaintiff was damaged and suffered emotional distress as a result of defendants’ conduct.

Motion for Summary Judgment, Opposition, and Reply

Defendants moved for summary judgment. They argued: (1) plaintiff “lost her secured interests due to the allegedly fraudulent misrepresentations of Chetcuti” and her “proper remedy was to sue” him; (2) defendants had no involvement in, or knowledge of,

plaintiff's loans to Chetcuti; (3) there was no evidence of a conspiracy or any fraudulent conduct by defendants; and (4) there was no evidence of outrageous conduct, nor evidence plaintiff suffered severe emotional distress. The court set a February 2013 hearing date.

In January 2013, plaintiff moved to continue the summary judgment hearing to allow her to depose Simonse. The court granted the motion and continued the hearing to April 4, 2013. Plaintiff deposed Simonse on three days in January and February 2013. Plaintiff filed her opposition to the summary judgment motion on March 21, 2013.² Relying on the allegations in the operative complaint, plaintiff argued defendants conspired with Chetcuti to "have [p]laintiff's lien [on 99 Cedro] out of the way" and that defendants did "not fully fund[]" the loan on 20 Parkridge. Plaintiff also argued there were triable issues of material fact regarding her declaratory and emotional distress claims. In a supporting declaration, plaintiff described how Chetcuti defrauded her and averred defendants "entered into an agreement, through . . . Simonse, to cause injury to a class of individuals in which [she] belong[ed], as creditors of . . . Chetcuti." Plaintiff also described the emotional and physical distress she suffered from defendants' "outrageous acts[.]" Her declaration attached 20 documents. Plaintiff's attorney, Crisostomo Ibarra, submitted a supporting declaration attaching 49 documents.

In reply, defendants argued there was "not one scintilla of admissible evidence in the reams of paper submitted of any wrongdoing by . . . [d]efendants." Defendants claimed plaintiff was confusing the allegations in the operative complaint with "requisite *facts*. She confuses *hearsay statements, allegations and unauthenticated documents* with required *admissible evidence*." Defendants also argued: (1) they had no knowledge of the loans plaintiff made to Chetcuti; (2) they did not conspire or agree with Chetcuti to harm plaintiff; and (3) plaintiff's emotional distress and alter ego claims failed. Defendants also objected to plaintiff's evidence on numerous grounds, contending all of the

² She also sought a continuance to allow her to "finish[] taking Simonse's deposition."

documents attached to plaintiff and Ibarra's declarations lacked authentication and that plaintiff's declaration contained inadmissible hearsay.

The Hearing is Continued and Plaintiff Submits Additional Evidence

On April 4, 2013, the court continued the summary judgment hearing on its own motion and asked the parties to agree on a new hearing date. The parties agreed on May 8, 2013. On May 6, 2013 — two days before the hearing — plaintiff filed three additional declarations in support of her opposition to the summary judgment motion. These declarations attached hundreds of pages of documents.

Defendants objected to the “late-filed declarations[,]” claiming plaintiff's opposition and supporting documents were due on March 21, 2013 — 14 days before the April 4, 2013 hearing date. Defendants urged the court to disregard the documents pursuant to Code of Civil Procedure section 437c, subdivision (b)(2).³ On May 8, 2013, plaintiff moved to continue the summary judgment hearing again, to allow her to obtain additional documents from defendants and additional deposition testimony from Simonse. The court continued the hearing to May 17, 2013.

On May 9 and 10, 2013, Ibarra filed two additional declarations — attaching a total of 50 documents — in support of plaintiff's opposition to the summary judgment motion. Defendants objected, claiming the declarations were “untimely” and filed “in bad faith” because the deadline to submit evidence in opposition to the motion was March 21, 2013. At plaintiff's request, the court continued the summary judgment hearing two additional times, and finally held a hearing on the motion in July 2013.

The Court Grants Defendants' Summary Judgment Motion

The court granted summary judgment for defendants and sustained defendants' objections to: (1) evidence plaintiff submitted on March 21, 2013 “as being hearsay[;]” (2) evidence plaintiff submitted after March 21, 2013 as “containing inadmissible hearsay

³ Unless noted, all further statutory references are to the Code of Civil Procedure. Section 437c, subdivision (b)(2) requires a party's opposition to a motion for summary judgment to be filed “not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.”

and . . . unauthenticated exhibits[;]” and (3) evidence plaintiff submitted after March 21, 2013 as “filed after the statutory time” set forth in section 437c, subdivision (b)(2), except Ibarra’s May 9, 2013 declaration, which was identical to the one he filed on March 21, 2013. The court explained that an order continuing a summary judgment hearing does not permit the opposing party to file an “entire new round” of pleadings and documents. Finally, the court determined defendants established there were no triable issues of material fact on the causes of action in the operative complaint.

Plaintiff’s Motion for Reconsideration and Judgment for Defendants

Plaintiff moved for reconsideration “on the ground of new and different facts than those considered by the [c]ourt” pursuant to section 1008, subdivision (a) and offered four supporting declarations. In opposition, defendants argued the evidence was not “new or different” as required by section 1008, subdivision (a) and objected to the evidence as “irrelevant, inadmissible and unauthenticated.” Following a hearing, the court denied the motion, concluding plaintiff “did not bring to light any ‘new’ facts which could not have been discovered earlier with reasonable diligence.” The court entered judgment for defendants.

DISCUSSION

I.

Plaintiff Has Not Established the Court Erred by Excluding Her Timely-Filed Opposition Evidence

As stated above, defendants objected to much of plaintiff’s timely-filed evidence offered in opposition to the summary judgment motion as “inadmissible” hearsay (Evid. Code, § 1200) and “containing unauthenticated exhibits” (Evid. Code, § 1400). The court sustained defendants’ hearsay objections. On appeal, plaintiff claims the court erred by excluding “various” — but unspecified — “items of evidence[.]”

Plaintiff’s argument fails because she does not provide “any examples of specific objections that the trial court sustained that were erroneous or unreasonable[.]” nor discuss her argument “in the context of any specific exhibit or exhibits.” (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 852, 854 (*Serri*)). Instead, she cites to

almost 100 pages of the clerk’s transcript and states — in conclusory fashion — the court erred by sustaining defendants’ objections to her timely-filed opposition evidence.

“‘[A]n appellate court cannot be expected to search through a voluminous record to discover evidence on a point raised by appellant when [her] brief makes no reference to the pages where the evidence on the point can be found in the record.’” (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1458.) For these reasons, we reject plaintiff’s challenge to the court’s evidentiary rulings excluding her timely-filed opposition evidence. (*Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341, 1370 [declining to review challenge to evidentiary ruling where plaintiffs “fail[ed] to identify any evidence that was allegedly improperly admitted”].)

Nor are we persuaded by plaintiff’s claim that the court erred by sustaining defendants’ objections because defendants produced many of the documents during discovery. Plaintiff cites no authority supporting this contention. At least one court has rejected an identical argument, explaining: “[n]ot every document that comes out of an opposing party’s files is automatically admissible against even that party, . . . [¶] Documents obtained in discovery in response to a request for production of documents may be used to support or oppose a motion for summary judgment, but must be presented in admissible form. This means the evidence must be (1) properly identified and authenticated, (2) admissible under the secondary evidence rule, (3) nonhearsay or admissible under some exception to the hearsay rule, and (4) a complete record, not selected portions of the document. [Citation.] Unless the opposing party admits the genuineness of the document, the proponent of the evidence must present declarations or other ‘evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is.’ [Citations.]” (*Serri, supra*, 226 Cal.App.4th at pp. 854-855.)

We also reject plaintiff’s claim — premised on *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 250 (*Nazir*) — that the court erred by issuing a “blanket ruling” excluding most of timely-filed opposition evidence. In *Nazir*, the trial court sustained all but one of defendants’ 764 objections to evidence plaintiff offered in opposition to summary judgment. A division of this court held “‘a trial court presented

with timely evidentiary objections in proper form must expressly rule on individual objections[.]” and determined the court’s order sustaining all but one objection was an abuse of discretion. (*Id.* at p. 255, quoting *Demps v. San Francisco Housing Authority* (2007) 149 Cal.App.4th 564, 578.) As the *Nazir* court explained, “there is no way that the trial court could properly have sustained 763 objections ““guided and controlled . . . by fixed legal principles’” because: (1) “[s]ome of the sustained objections did not even assert any basis for the objection[;]” (2) some of the “sustained objections were to plaintiff’s testimony about his dates of employment, his religion, his skin color, and his national origin[;]” (3) many of the objections failed to quote the challenged evidence in violation of California Rules of Court, rule 3.1354; and (4) twenty-seven “of the sustained objections were to plaintiff’s brief, not his evidence.” (*Nazir, supra*, 178 Cal.App.4th at pp. 255-256.)

We have no quarrel with the general rule that “a trial court presented with timely evidentiary objections in proper form must expressly rule on individual objections[.]” but conclude *Nazir* is distinguishable. (*Nazir, supra*, 178 Cal.App.4th at p. 255.) Here and in contrast to *Nazir*, defendants submitted 80 objections — not 764 — and in the form delineated in California Rules of Court, rule 3.1354. Unlike *Nazir*, where the court made a broad, generalized ruling sustaining hundreds of objections, the court here expressly ruled on specific evidentiary objections by sustaining defendants’ hearsay objections. Nothing more was required. (*Mora v. Big Lots Stores, Inc.* (2011) 194 Cal.App.4th 496, 512, fn. 15 [rejecting argument that trial court erred by failing to explain its evidentiary rulings].) Plaintiff’s reliance on *Nazir* does not assist her and she has failed to demonstrate the court abused its discretion by sustaining defendants’ hearsay objections to her timely-filed opposition evidence.

II.

The Court Did Not Err by Refusing to Consider Opposition Evidence Filed After the Statutory Deadline

As stated above, the court sustained defendants’ objections to the majority of the evidence plaintiff submitted after March 21, 2013, concluding it was untimely under

section 437c, subdivision (b)(2) and explaining an order continuing a summary judgment hearing does not permit the opposing party to file an “entire new round” of pleadings and supporting evidence. Plaintiff contends the court erred by excluding evidence she filed after March 21, 2013.

Section 437c requires a party seeking summary judgment to file the motion and supporting papers 75 days before the hearing. (§ 437c, subd. (a).) An opposition to the motion must be filed “not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.” (§ 437c, subd. (b)(2).) “[S]ection 437c, subdivision (b) . . . forbids the filing of any opposition papers less than 14 days prior to the scheduled hearing, and the case law has been strict in requiring good cause to be shown before late filed papers will be accepted.” (*Hobson v. Raychem Corp.* (1999) 73 Cal.App.4th 614, 624-625 (*Hobson*), disapproved on other grounds in *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1031.) We review the court’s decision to disregard evidence plaintiff filed after March 21, 2013 for abuse of discretion. (*Hobson, supra*, 73 Cal.App.4th at p. 625; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 10.218.5, p. 10-96 [“A court has discretion to *refuse* to consider papers . . . filed beyond the deadline without a prior court order finding good cause for late submission”].)

Plaintiff claims the March 21, 2013 cut-off date was “arbitrary” and the exclusion of evidence she submitted after that date was “not in the furtherance of justice.” This argument fails for several reasons. First, it is unsupported by authority. When an appellant asserts a point “but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]” (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007.) Second, the March 21, 2013 cut-off date was not arbitrary. “The requirement that opposing papers be filed a reasonable time in advance of the hearing helps to ensure that the court and the parties will be familiar with the facts and the issues so that meaningful argument can take place and an informed decision rendered at the earliest convenient time.” (*Shadle v. City of Corona* (1979) 96 Cal.App.3d 173,

178-179.) The statutory deadline also prevents a party opposing a summary judgment motion from filing voluminous opposition documents well after the moving party files its reply memorandum, effectively denying the moving party an opportunity to reply.

Plaintiff has failed to establish the court abused its discretion by excluding opposition evidence she filed after March 21, 2013. (*Cuff v. Grossmont Union High School Dist.* (2013) 221 Cal.App.4th 582, 596 [“trial court properly disregarded” motion as “untimely” under section 437c, subd. (b)(2)]; *Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 765 [refusal to consider “plaintiff’s ‘surrebuttal’ brief” in opposition to summary judgment was not an abuse of discretion]; *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 255 [attorney’s declaration untimely under section 437c, subd. (b)(2)].)

III.

Plaintiff Has Not Demonstrated the Court Erred by Granting Summary Judgment for Defendants

Next, plaintiff claims the court erred by granting summary judgment for defendants because “there was sufficient evidence in the trial court to find collusion/conspiracy” between defendants and Chetcuti. We are not persuaded for several reasons. First, plaintiff concedes the court’s evidentiary rulings “mean that [her] evidence was virtually non-existent[.]” She also concedes defendants denied being “engaged in a scheme that resulted in damage to [her].” Second, plaintiff does not identify what “evidence” creates a triable issue of fact on any of her claims. “Rather than scour the record unguided,” we conclude plaintiff has waived this argument by failing to support it with “accurate citation to the record.” (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287.) Third, plaintiff’s argument consists entirely of boilerplate recitation of summary judgment principles of which we are well aware. Plaintiff “must supply the reviewing court with some cogent argument supported by legal analysis. . . . [W]e . . . disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions [she] wants us to adopt. [Citations.]” (*Id.* at p. 287.)

IV.

Plaintiff's Argument Regarding Her Reconsideration Motion Fails

Plaintiff's final claim is the court erred by denying her motion for reconsideration because she "brought new evidence to shed light on her conspiracy claims." We decline to consider this claim — consisting of two sentences — because it is unsupported by reasoned argument and citations to authority. (*City of Huntington Beach v. Public Utilities Com.* (2013) 214 Cal.App.4th 566, 589.) "When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary. [Citations.]" (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.) Simply stating the court erred does not make it so. Plaintiff does not explain how the evidence was new, why it could not have been discovered earlier with reasonable diligence, and why it was admissible and relevant. (*New York Times Co v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) We summarily reject plaintiff's two-sentence argument regarding her reconsideration motion because she failed to "develop it in any meaningful way." (*Giorgianni v. Crowley* (2011) 197 Cal.App.4th 1462, 1483.)

DISPOSITION

The judgment is affirmed. Defendants shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

Jones, P.J.

We concur:

Simons, J.

Needham, J.