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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SANDRA PEDROIA,

Plaintiff and Appellant,

v.

SPECTRUM BRANDS, INC.,

Defendant and Respondent.

A141610

(San Francisco County
Super. Ct. No. CGC-10-496442)

Sandra Pedroia appeals from a judgment entered after the trial court granted a motion for judgment on the pleadings without leave to amend. She contends the court (1) erred in concluding that the complaint was untimely, due to the tolling of the statute of limitations under Code of Civil Procedure section 356 for a bankruptcy stay; (2) erred in rejecting her theories of equitable tolling, equitable estoppel, and implied tolling; and (3) improperly prohibited an attorney, who was not her attorney of record, from presenting oral argument on her behalf at the motion hearing. She also contends she should be granted leave to amend her complaint. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

Pedroia alleges that she was injured on May 30, 2007, when she used a Remington Epilator hair removal product manufactured by respondent Spectrum Brands, Inc. (Spectrum). Although there is evidence the injury might have occurred earlier that month, the parties agree that May 30, 2007, should be used as the injury date for purposes of this appeal.

A. Spectrum's Bankruptcy Proceeding

On February 3, 2009, about 20 months after Pedroia sustained her injury and before she filed any lawsuit, Spectrum and its subsidiaries filed for chapter 11 bankruptcy protection. The bankruptcy proceedings were administered under the case name "In re Spectrum Jungle Labs Corporation, et al."

On March 14, 2009, Pedroia voluntarily filed a notice of claim with the bankruptcy court.

On July 15, 2009, the bankruptcy court entered an "Order Confirming Joint Plan of Reorganization of Spectrum Jungle Labs Corporation, et al., Debtors" (Confirmation of Plan). Among other things, the order discharged "all such Claims and other debts and liabilities against the Debtors."

Around December 1, 2009—and no later than December 4, 2009—Pedroia received a letter from an attorney informing her that Spectrum had emerged from bankruptcy and, in essence, the bankruptcy stay had been lifted.

Pedroia immediately looked for an attorney who would file a lawsuit on her behalf. In January 2010, she retained the Law Offices of Brian L. Larsen, which filed a complaint for her on January 29, 2010.

B. Pedroia's Complaint

Pedroia's complaint asserted a cause of action for products liability based on negligence and breach of an implied warranty. As mentioned, the complaint alleged that Pedroia suffered injury on May 30, 2007. Although filed more than two years after this date, the complaint did not allege the bankruptcy proceedings, a bankruptcy stay, or any other fact germane to the potential tolling of the limitations period.

Because the complaint erroneously named "Spectrum Jungle Labs, Corp." as the defendant, the court permitted Pedroia to amend the complaint to name Spectrum in its stead. Spectrum answered the complaint in July 2012.

In March 2013, the Law Offices of Brian L. Larsen moved to withdraw as Pedroia's attorney of record. The court relieved the Law Offices of Brian L. Larsen as counsel effective March 29, 2013.

C. Spectrum's Summary Judgment Motion

Spectrum filed a motion for summary judgment in August 2013, arguing that Pedroia's lawsuit was barred by the two-year statute of limitations set forth in Code of Civil Procedure section 335.1. Spectrum's moving papers did not mention the bankruptcy or discuss whether the automatic bankruptcy stay tolled the limitations period. After Pedroia raised the issue in her in propria persona opposition to the motion, Spectrum addressed it as well.

On October 31, 2014, attorney John Henning of the Law Offices of Brian L. Larsen specially appeared at the summary judgment hearing and argued on behalf of Pedroia, who was also in attendance.

The court denied Spectrum's summary judgment motion because of a "triable issue of fact on the tolling of the statute of limitation." In particular, the court could not determine from the evidence when the bankruptcy stay had ended.

D. Spectrum's Motion for Judgment on the Pleadings

On December 10, 2013, Spectrum filed a motion for judgment on the pleadings. Spectrum again contended the case should be dismissed due to the statute of limitations, and this time it briefed the effect of the bankruptcy stay in its moving papers. Spectrum asserted that the face of the complaint demonstrated the untimeliness of Pedroia's claims, because the complaint alleged that Pedroia's injury occurred on May 30, 2007, and the two-year limitations period of Code of Civil Procedure section 335.1 expired in May 2009, months before the complaint was filed in January 2010. Furthermore, Spectrum argued, Pedroia's claims would be time-barred even if the complaint were amended to allege the facts relating to the bankruptcy stay, including the tolling of the limitations period from the commencement of the bankruptcy action in February 2009 to the end of the bankruptcy in July 2009. According to Spectrum, the deadline for filing the

complaint expired 30 days after notice of the lifting of the bankruptcy stay (see 11 U.S.C. § 108(c)), which Pedroia admitted receiving by December 4, 2009, more than 30 days before she filed her complaint.

In support of its motion, Spectrum asked the court to take judicial notice of a certified copy of its bankruptcy filing; a certified copy of the Confirmation of Plan, dated July 15, 2009; and a copy of Spectrum's motion for summary judgment and Pedroia's opposition papers, including Pedroia's admission that she had received notice of the lifting of the stay by December 4, 2009.

Pedroia, appearing in propria persona, opposed the motion for judgment on the pleadings. (Although Pedroia purported to be proceeding in propria persona, her opposition papers bore the fax stamp of "Law Offices of Brian Larsen.") Pedroia contended the bankruptcy case was not actually closed until March 2010, the limitations period was tolled to a date after she filed her complaint, and her complaint was timely filed (or she should at least be granted leave to amend) based on several theories including equitable tolling, equitable estoppel, and implied tolling.

The trial court issued a tentative ruling in Spectrum's favor. Pedroia did not personally inform the court or Spectrum's counsel that she would appear to contest the tentative ruling. Instead, at 5:02 p.m., Brian Larsen sent an email to the court and Spectrum's attorney that "we" would be contesting the tentative ruling.

At the hearing on January 24, 2014, Pedroia did not appear. The court refused to allow Henning, who purported to be associated with Brian Larsen's law firm, to appear specially and argue for Pedroia, because neither Larsen's office nor Henning was Pedroia's attorney of record. The relevant colloquy occurred as follows: "MR. HENNING: Good morning, Your Honor. John Henning specially appearing for Plaintiff, Sandra Pedroia. [¶] . . . [¶] THE COURT: Mr. Henning, I'm a little bit at a loss to know what to say. We got a notice from a Mr. Larsen. [¶] MR. HENNING: Correct. [¶] THE COURT: He's not attorney of record and you're not attorney of record. There has been one matter after another where the pro per Plaintiff has attorneys appear. [¶] MR. HENNING: I'm with Mr. Larsen's office, Your Honor, and we have appeared.

[¶] THE COURT: He's not attorney of record. [¶] MR. HENNING: That's correct.

[¶] THE COURT: So I don't know what you're doing here. [¶] MR. HENNING: Well, we're specially appearing. [¶] THE COURT: You can't keep just specially appearing. You're either attorney of record or you're not. [¶] . . . [¶] . . . I'm sorry. I don't think you have standing to be here. [¶] MR. HENNING: All right. I respect that decision. I disagree with it. So if I may, Your Honor, may I ask, is there a case cite or statute?

[¶] THE COURT: I'm just telling you that somebody's either an attorney of record—this has happened time and again. There's no substitution. The only attorney, as far as I know, is the pro per. I don't know what your standing is, I don't know what your status is, and so I'm not going to entertain your argument.”

The court then adopted the tentative ruling, granting the motion for judgment on the pleadings without leave to amend. The court's order explained as follows: “[Code of Civil Procedure section] 335.1 [2 year statute of limitations] bars plaintiff's action. Under 11 [United States Code section] 362(c)(2), the bankruptcy stay was lifted when the bankruptcy court issued the reorganization/discharge order on July 15, 2009. Pursuant to 11 [United States Code section] 108(c), plaintiff had until ‘30 days after notice of the termination or expiration of the stay’ to file her action. Plaintiff's declaration in opposition to the motion for summary judgment admits that she had notice that the stay was lifted by December 1 or 4 of 2009. The Court can take judicial notice of that affidavit. [Citation.]”

E. Subsequent Proceedings

On February 3, 2014, Pedroia filed a motion for reconsideration of the order granting judgment on the pleadings. At the hearing on March 7, 2014, the court denied the motion because the judgment dismissing the case against Spectrum had already been entered on February 20, 2014.

Also in March 2014, Pedroia filed a new trial motion. The court did not issue a ruling on the motion, effectively denying it. (See Code Civ. Proc., § 660.)

This appeal, from the “Dismissal after an order granting a motion for judgment on the pleadings,” followed.

II. DISCUSSION

“A defendant’s motion for judgment on the pleadings should be granted if, under the facts as alleged in the pleading or subject to judicial notice, the complaint fails to state facts sufficient to constitute a cause of action.” (*County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 32.) “When a complaint shows on its face or on the basis of judicially noticeable facts that the cause of action is barred by the applicable statute of limitations, the plaintiff must plead facts which show an excuse, tolling, or some other basis for avoiding the statutory bar.” (*Ponderosa Homes, Inc. v. City of San Ramon* (1994) 23 Cal.App.4th 1761, 1768.)

For purposes of this appeal, there is no dispute that Pedroia’s cause of action accrued on the date of her injury in May 2007, the two-year limitations period of Code of Civil Procedure section 335.1 applied, and Pedroia did not file her complaint until January 2010. Pedroia contends the court nonetheless erred in granting the motion for judgment on the pleadings because (1) in light of the bankruptcy material judicially noticed, the limitations period was tolled during the pendency of the bankruptcy stay under Code of Civil Procedure section 356; (2) the limitations period was subject to equitable tolling, equitable estoppel, and implied tolling; and (3) the court should have permitted Henning to present argument on her behalf at the motion hearing. Pedroia also urges that she should be allowed to amend the complaint to cure its deficiencies.

In our review of an order granting judgment on the pleadings, we treat the pleadings as admitting all of the well-pleaded material facts and determine de novo whether those facts, and any matters subject to judicial notice, state a cause of action. (*Bettencourt v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 1103, 1111 (*Bettencourt*); *DiPirro v. American Isuzu Motors, Inc.* (2004) 119 Cal.App.4th 966, 972.) We review the denial of leave to amend for an abuse of discretion. (*Bettencourt*, at p. 1111.)

A. Tolling for Bankruptcy Stay; Code of Civil Procedure Section 356

Code of Civil Procedure section 356 provides that the duration of a statutory stay is not included in the time permitted for commencement of a lawsuit. It states, “When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.” The statute does not, however, specify the *duration* of a stay or statutory prohibition, such as a stay compelled by the federal bankruptcy law.

The automatic stay arising from federal bankruptcy proceedings is governed by 11 United States Code section 362. Subdivision (a) of that statute expressly imposes the stay. (See *Kertesz v. Ostrovsky* (2004) 115 Cal.App.4th 369, 373 (*Kertesz*.) Subdivision (c)(2) of the statute specifies when the stay ends: “[T]he stay of any other act under subsection (a) of this section continues until *the earliest of—* [¶] (A) the time the case is closed; [¶] (B) the time the case is dismissed; or [¶] (C) if the case is a case under chapter 7 of this title concerning an individual or a *case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.*” (Italics added.)

Here, the earliest of the events specified in 11 United States Code section 362(c)(2) was the granting of a discharge, which occurred upon the confirmation of Spectrum’s reorganization plan on July 15, 2009. The confirmation of a plan “discharges the debtor” from debts arising before the confirmation date (11 U.S.C. § 1141(d)), thereby triggering the termination of the automatic stay under 11 United States Code section 362(c)(2)(C). (*In re Herron* (Bankr. W.D.La. 1986) 60 B.R. 82, 84 & fn. 1 [automatic stay was terminated when the bankruptcy court confirmed the debtor’s chapter 11 reorganization plan, even though the bankruptcy court retained jurisdiction thereafter].) Pedroia presents no legal authority suggesting that the Confirmation of Plan did not discharge Spectrum on July 15, 2009, and terminate the bankruptcy stay as relevant to this case.

1. Application

Based on the facts alleged in the complaint and judicially noticed, the two-year limitations period began to run on May 30, 2007. By the time the bankruptcy proceedings were filed and the stay arose on February 3, 2009, a little less than four months of the limitations period remained. When the bankruptcy stay ended on July 15, 2009, the remaining four months of the limitations period began to run, such that the limitations period would expire in November 2009. Or, to put it another way, the period of the bankruptcy stay (162 days between February 3 and July 15, 2009), added to the end of the two-year limitations period, would yield a filing deadline in November 2009. (*Schumacher v. Worcester* (1997) 55 Cal.App.4th 376, 380 [suspension of a statute of limitations for a certain period is effectively taking time out for that period; the same period of time is added to the statutory limitation time].)

However, as the trial court correctly acknowledged, another federal statute operated to give Pedroia more time to file her complaint. Subdivision (c) of 11 United States Code section 108 provides: “[I]f applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until *the later of*— [¶] (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; *or* [¶] (2) 30 days after notice of termination or expiration of *the stay* under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.” Under 11 United States Code section 108, therefore, Pedroia had until either the end of the limitations period (November 2009) or 30 days after the December 4, 2009, notice of the stay’s termination (January 4, 2010) to file her complaint.

In short, Pedroia’s complaint had to be filed by January 4, 2010. She did not file it, however, until January 29, 2010. The complaint was therefore time-barred, and the court did not err in granting Spectrum’s motion for judgment on the pleadings.

2. Pedroia's Arguments

Pedroia's several arguments to the contrary are meritless.

a. Pedroia's Calculations Are Incorrect

Pedroia argues, essentially, that “the entire period of the bankruptcy stay is tolled and an additional 30 days are tacked on,” such that the 30 days runs from the *end* of the bankruptcy proceedings. Thus, she argues, “Because Spectrum’s bankruptcy case was not actually closed until March 31, 2010, which was *after* [] Pedroia’s Complaint was filed, Pedroia’s Complaint was timely filed.” But Pedroia is incorrect. Pursuant to the governing federal law, the 30 days did not run from the closure of the bankruptcy case on March 31, 2010, but from the notice of the expiration of the stay on December 4, 2009. (11 U.S.C. § 108(c)(2).)

Pedroia next argues that, assuming her injury occurred in May 2007, the two-year limitations period extended to May 2009, and then 301 days must be added (the length of time from the commencement of the bankruptcy proceedings in February 2009 to her notice of the lifting of the stay in December 2009). Obviously, this analysis is incorrect as well, because it counts the period from February 2009 to May 2009 twice—once in the two-year limitations period and again in the tolling period. It is also incorrect because the bankruptcy stay ended in July 2009, not December 2009.

Finally, in her reply brief in this appeal, Pedroia asserts that Code of Civil Procedure section 356 overrides the federal bankruptcy statutes because it provides, in her words, that “the entire stay period of the bankruptcy (or other proceeding) be added on to the statutory time limit.” (Citing *Graybar Electric Co. v. Lovinger* (1947) 81 Cal.App.2d 936, 937-938 [adding to limitations period the time from the filing of a bankruptcy petition to the order denying discharge].) Applying this approach to the matter at hand, however, confirms that Pedroia’s complaint was not timely filed. The automatic stay period commenced upon Spectrum’s bankruptcy filing (February 3, 2009) and ended with the order confirming the plan and discharging Spectrum (July 15, 2009)—a period of 162 days. Adding 162 days to the end of the two-year limitations

period (May 30, 2009) yields a mandatory filing date of November 8, 2009. Pedroia did not file her complaint until January 2010.

b. Kertesz Is Unavailing

Pedroia's reliance on *Kertesz, supra*, 115 Cal.App.4th 369, does not assist her either. There, plaintiffs filed a complaint to recover on a prior unpaid judgment. They alleged that the defendants filed for bankruptcy protection on April 12, 1991, and the bankruptcy court denied the plaintiffs' allegation that the debt was nondischargeable on August 14, 1992, entering judgment on the plaintiffs' complaint in the bankruptcy proceeding. The parties did not inform the trial court of the date the bankruptcy proceedings ended. (*Id.* at pp. 371-373.) The court ruled that the limitations period for filing the complaint had been tolled by the defendant's petition for bankruptcy under 11 United States Code section 362(a). (*Id.* at p. 374.) The court also ruled that the time for filing the complaint was extended pursuant to 11 United States Code section 108(c) for 30 days "after notice of the termination or expiration of the stay under section 362." (*Id.* at p. 377.) *Kertesz* thus actually confirms the trial court's analysis in this case: Pedroia had to file her complaint within 30 days after receiving notice on December 4, 2009, that the stay had terminated.

In *Kertesz*, however, the parties had *failed to inform the court of the date the stay had terminated*, so the court calculated the end of the automatic stay by using the date the bankruptcy court entered judgment on the plaintiffs' complaint in the bankruptcy proceedings. (*Kertesz, supra*, 115 Cal.App.4th at p. 378.) In this regard, *Kertesz* is distinguishable from the matter at hand, since the court in this case *was* informed of the end date of the automatic stay—namely, the date of the Confirmation of Plan and the resulting discharge of the debtor on July 15, 2009. (11 U.S.C. § 362(c)(2).) It was also informed of the date on which Pedroia received notice of the termination of the automatic stay—no later than December 4, 2009—so it had the facts necessary to calculate the 30-day add-on period. (11 U.S.C. § 108(c).) Neither *Kertesz*, nor any

other case Pedroia cites, supports her proposition that the trial court should have added the extra 30 days to the end of the *entire* bankruptcy proceedings.

c. The Discharge Date Is Clear

Pedroia contends, “Nothing in the bankruptcy documents attached to Spectrum’s Motion for Judgment on the Pleadings clearly reflect [*sic*] the date when a discharge was granted or denied as to Sandra Pedroia’s claim.” However, the trial court took judicial notice of a certified copy of the Confirmation of Plan, which ordered the discharge of “all such Claims and other debts and liabilities against the Debtors” and was dated July 15, 2009. In addition, Spectrum provided a copy of the letter Pedroia received—which Pedroia had attached to her opposition to the summary judgment motion—stating that the reorganization plan was confirmed by the bankruptcy court on July 15, 2009. The materials before the court clearly indicated that Spectrum was discharged on July 15, 2009.

d. The Complaint Was Liberally Construed

Pedroia further suggests the court should have construed her complaint more liberally. She fails to explain, however, how the court could have done so. Pedroia alleged she was injured on May 30, 2007. As a matter of law based on the facts alleged or judicially noticed, the bankruptcy stay was imposed between February 3, 2009, and July 15, 2009, and the limitations period was extended to the later of the limitations period’s end or 30 days after Pedroia received notice of the end of the stay on December 4, 2009. The only inference from these facts—indeed, the most liberal construction—compels the conclusion that the complaint was untimely because it was filed on January 29, 2010.

e. The Limitations Period May Be Decided By the Court

Lastly, Pedroia asserts that the statute of limitations is a defense that normally involves a question of fact. In this case, however, the allegations of Pedroia’s pleading and the matters judicially noticed left no factual dispute. Based on these facts, as a matter of law the complaint was untimely filed and the statute of limitations defense was

established. (See *Hunt v. County of Shasta* (1990) 225 Cal.App.3d 432 [pleading which on its face is barred by the limitations period is subject to judgment on the pleadings].)

B. Pedroia's Other Theories

Pedroia contends the trial court should have accepted her theories of equitable tolling, equitable estoppel, and implied tolling. She fails to establish error.

1. Equitable Tolling

The doctrine of equitable tolling may extend a limitations period if the plaintiff reasonably and in good faith chose to pursue one of several remedies and the statute of limitations' notice function has been served. (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 98, 114.) Pedroia argues that she voluntarily chose to pursue her remedy in the bankruptcy court, her bankruptcy filing gave Spectrum notice of her personal injury claim, and, she claims, the bankruptcy proceeding did not end until March 2010, after she filed her complaint. Therefore, she urges, she should have been allowed to amend her complaint to allege these facts.

Pedroia's argument is unsound. She submitted her claim in the bankruptcy court on March 14, 2009, and the automatic stay expired on July 15, 2009, upon the confirmation of the plan. This reflects an equitable tolling period of 123 days, extending the limitations period to September 30, 2009, long before she filed her complaint. Pedroia does not establish how or why the period of equitable tolling should continue beyond the expiration of the automatic stay, all the way to the end of Spectrum's bankruptcy proceedings; indeed, the record does not show that there was anything more Pedroia could do to advance her claim in the bankruptcy court once the chapter 11 plan was confirmed and Spectrum's debts were discharged in accordance with the plan.

Pedroia contends, "Whether equitable tolling applies is a question of fact for the jury, [and] a Motion for Judgment on the Pleadings was not an appropriate procedural tool with which to dismiss Plaintiff's Complaint." Pedroia is incorrect. Equitable tolling is an issue for the court. (*Hopkins v. Kedzierski* (2014) 225 Cal.App.4th 736, 745.) And even if equitable tolling could present a factual issue for a jury in the event of a dispute,

a court may order judgment on the pleadings where, as here, the facts as alleged and judicially noticed are insufficient as a matter of law.

2. Equitable Estoppel

Pedroia contends Spectrum should be estopped from arguing that the complaint is barred by the statute of limitations. She urges that equitable estoppel requires only that the defendant's conduct misled the plaintiff and the plaintiff reasonably relied on the conduct. (Citing *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 384.) She maintains she should have been allowed to allege that Spectrum's conduct misled her, because Spectrum failed to notify her of the lifting of the bankruptcy stay until its letter of November 30, 2009, about four months after the stay was lifted.

The argument is untenable. Spectrum never represented that Pedroia would not be barred by the statute of limitations if she waited until January 29, 2010, to file her complaint, or that the governing federal law would not apply to her. Furthermore, to the extent Pedroia claims that Spectrum somehow misled her by remaining silent about the status of the bankruptcy proceeding, she alleged no facts indicating she delayed filing her complaint in justifiable reliance on Spectrum's silence: she did not allege she was aware Spectrum would provide such notice, much less that she was waiting for it or was unable to ascertain the status herself.

In any event, even if Spectrum *had* misled Pedroia about the status of the bankruptcy proceeding between July 2009 and December 4, 2009, and Pedroia justifiably relied on Spectrum's silence, Spectrum would merely be estopped from asserting that the limitations period had ended on some date *before* December 4, 2009, when Pedroia admittedly received actual notice that the stay was lifted. Here, Pedroia had 30 days *after* that date to file her complaint pursuant to 11 United States Code section 108(c). She fails to allege, much less show, that any act or omission by Spectrum precluded her from timely filing the complaint within that 30-day period.

3. Implied Tolling

Pedroia argues that the limitations period should be extended under a theory of implied tolling, because Spectrum's alleged failure to tell her about the end of the bankruptcy case until December 2009 rendered it unfair to require her to file a complaint on time. We disagree.

The record does not suggest anything unfair about requiring Pedroia to file her complaint within 30 days after she learned the bankruptcy stay was lifted. The case on which Pedroia relies—*Lewis v. Superior Court* (1985) 175 Cal.App.3d 366—is plainly distinguishable. There, the plaintiff's solo-practitioner attorney was struck by an automobile days before the end of the deadline for filing the complaint, inflicting life-threatening injuries that totally disabled him mentally and physically such that it was impossible for him to comply with the statute of limitations on his client's behalf. (*Id.* at pp. 370, 380.) Obviously, no such facts exist here. To the contrary, Pedroia claims she was able to make "every reasonable effort" to find a lawyer and file her lawsuit immediately after she learned the stay was lifted; nothing in the record indicates she or her attorneys could not have filed the complaint by the deadline.

The court did not err in granting the motion for judgment on the pleadings.

4. Refusal to Grant Leave to Amend

The allegations of Pedroia's complaint, along with the facts judicially noticed, demonstrated that her complaint was untimely filed. To the extent Pedroia requested leave to amend, she did not show how she could amend the complaint to cure its untimeliness. The court did not abuse its discretion in denying leave to amend. (*Bettencourt, supra*, 205 Cal.App.4th at p. 1111.)

C. Preclusion of Attorney from Arguing at the Motion Hearing

Pedroia contends the court should have allowed Henning, who was not her attorney of record, to argue on her behalf at the hearing. She insists that having an attorney appear in a limited scope for an in propria persona litigant is "helpful" because a "judge cannot rely on the pro per litigants to know each of the procedural steps, to raise

objections, to ask all the relevant questions of witnesses, and to otherwise protect their due process rights.” (*Ross v. Figueroa* (2006) 139 Cal.App.4th 856 (*Ross*)). Pedroia’s argument is unpersuasive.

As a general matter, an attorney may appear on behalf of a party only if the attorney is the attorney of record. (See Code Civ. Proc., § 284 [substitution of attorney permissible with consent of party and attorney]; § 285 [notice of substitution to be given to opposing party]; *Epley v. Califro* (1958) 49 Cal.2d 849, 854 [court should recognize the attorney of record, not the party or another attorney].) Furthermore, a trial court has broad discretion in deciding whether to allow an attorney to appear specially at a hearing. (See *Ross v. Ross* (1953) 120 Cal.App.2d 70, 74.)

Here, the trial court did not abuse its discretion in declining to allow Henning to argue on behalf of Pedroia. As Henning conceded, neither he nor the Law Offices of Brian L. Larsen, with whom he was purportedly associated, was the attorney of record. In fact, the Law Offices of Brian L. Larsen had withdrawn from representing Pedroia, Pedroia’s papers in connection with the motion for judgment on the pleadings asserted that Pedroia was proceeding in propria persona, no substitution of attorneys had been filed, and Pedroia was not present in court to express her consent to Henning’s representation.

The cases on which Pedroia relies are inapposite. In *Ross*, the court noted that in domestic violence hearings, in which the vast majority of plaintiffs and defendants are unrepresented, the judge should take more of an active role in developing the facts. (*Ross, supra*, 139 Cal.App.4th at p. 861.) *Ross* has nothing to do with whether an in propria persona litigant is entitled to have an attorney argue on his or her behalf.

In *Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441 (*Streit*), the issue was whether an attorney who specially appeared for a client, as a favor to the client’s actual attorney of record, owed a duty to the client. (*Id.* at p. 444.) *Streit* did not decide whether the special appearance was proper, and, in any event, the type of appearance at issue in *Streit*—an attorney appearing for the attorney of record—is distinguishable from the requested appearance here—an attorney appearing for an in propria persona litigant.

If anything, *Streit* suggests the court in this case was correct in prohibiting Henning from appearing on Pedroia’s behalf. The court in *Streit* observed that an attorney purporting to make a special appearance would *not* be heard unless he or she was “associated with the party’s *attorney of record*.” (*Streit, supra*, 82 Cal.App.4th at p. 445, italics added.) Here, Henning may have been associated with Larsen’s firm, but Larsen’s firm was *not* Pedroia’s attorney of record, as Henning admitted to the court.

Moreover, Pedroia fails to establish that she was prejudiced by the court’s order. Even if the court should have allowed Henning to *appear* specially on behalf of Pedroia, it would not have been required to allow him to *argue*, since neither Pedroia nor anyone on her behalf gave timely notice to the court and Spectrum’s counsel of an intent to oppose the tentative ruling. (Cal. Rules of Court, rule 3.1308 [requiring notice to court and other party by 3:00 p.m. the court day before the hearing].) And even if Henning *had* been allowed to argue on Pedroia’s behalf, there is no indication in the record—or even in Pedroia’s appellate briefs—that it would have made any difference. The motion for judgment on the pleadings was fully briefed, and any argument by Henning would have been limited by those briefs. Pedroia does not explain what Henning would have argued if given the chance, or why it possibly could have resulted in a different outcome. Indeed, the arguments presented by Henning in this appeal as Pedroia’s appellate counsel have no merit whatsoever.¹

Pedroia fails to establish error.

III. DISPOSITION

The judgment is affirmed.

¹ In her reply brief, Pedroia argues: “Preventing pro per Plaintiff Sandra Pedroia from having counsel argue at her dismissal hearing was the equivalent to not letting her ‘be heard according to law’ and resulted in her case not being ‘fairly adjudicated in accordance with the law.’ ” However, Pedroia was certainly “heard” by virtue of the court’s consideration of her written opposition papers; she also had the opportunity to appear and argue in propria persona. Moreover, the court did not prevent *Pedroia* from having counsel argue on her behalf; rather, the court prevented *Henning* from arguing on behalf of Pedroia in the absence of any proper substitution of attorney or representation by Pedroia that she needed or wanted Henning to speak for her.

NEEDHAM, J.

We concur.

JONES, P.J.

BRUINIERS, J.