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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ELIZABETH KARNAZES,
Plaintiff and Appellant,

v.

CITIMORTGAGE, INC., ET AL.,
Defendants and Respondents.

A144813

(San Francisco County
Super. Ct. No. CGC-13-529203)

Elizabeth Karnazes appeals from a judgment of dismissal entered after the trial court sustained respondents' demurrer to her fourth amended complaint without leave to amend. She contends the demurrer should not have been sustained and leave to amend should have been granted. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

We set forth the events as alleged in Karnazes' pleadings and as set forth in documents that respondents presented to the trial court with a request for judicial notice.

In March 1988, Karnazes and her ex-husband obtained a mortgage loan (Loan) from Glendale Federal Savings and Loan Association (Glendale). The Loan was secured by a deed of trust on real property in Foster City, California (Property).

Glendale merged with California Federal Bank, which merged with Citibank (West) FSB, which merged with Citibank, N.A. Citibank, N.A., assigned the interest under the deed of trust to CitiMortgage, Inc. In August 2010, CitiMortgage, Inc., transferred its interest under the deed of trust to Pacifica L. Nineteen, LLC (Pacifica).

After a divorce, Karnazes obtained sole title to the property, but her ex-husband was supposed to make the mortgage payments. In June 2010, Karnazes learned that her ex-husband had stopped making the payments.

In November 2010, Pacifica recorded a notice of default. In February 2011, Pacifica recorded a notice of trustee's sale. The following month, Pacifica recorded a trustee's deed upon sale, reflecting that the Property had been sold at an auction on March 1, 2011. However, both the trustee's deed upon sale and the notice of trustee's sale were rescinded in March 2011.

Karnazes tried to address the delinquency of the Loan with Pacifica until June 2012, when she learned that "a company called BSI had taken over servicing her loan." Karnazes then addressed the delinquency with BSI.

A. Karnazes' Complaint

In March 2013, Karnazes (in pro per) filed a lawsuit against CitiMortgage, Inc., Citibank, N.A., Glendale, Pacifica, BSI, and others. The complaint asserted causes of action for intentional tort, negligence, breach of contract, intentional and negligent misrepresentation, and false promise. As the basis of her intentional tort and negligence claims, Karnazes alleged that "Defendants" had failed to communicate with her and wrongfully foreclosed on her home, thereby interfering with her business advantage, unjustly enriching themselves, and violating Business and Professions Code section 17200. For her breach of contract claim, Karnazes alleged that "defendant" wrongfully foreclosed on her home and that her note and deed of trust were wrongfully transferred. The fraud-related claims asserted that "Defendants promised to provide proper mortgage practices under the law and to treat Plaintiff fairly," but did not do so.

Although Karnazes did not serve the complaint on any of the defendants, respondents CitiMortgage, Inc., and Citibank, N.A. (collectively, Citi) learned of the

complaint and filed a motion to transfer venue to San Mateo County, in which the Property is located. The motion was denied.¹

Citi then filed a demurrer to Karnazes' complaint in June 2013, contending that the pleading was uncertain (because it did not specify what acts were allegedly committed by each defendant) and that it failed to state a cause of action for intentional tort (due to a variety of shortcomings), negligence (due to the failure to allege facts giving rise to a duty), breach of contract (because no relevant contract was alleged), or fraud (noting the claim was not alleged with particularity).

Karnazes opposed the demurrer, asserting that the causes of action were "proper" without further explanation. She also requested 90 days leave to file a first amended complaint.

In August 2013, the trial court sustained the demurrer with 20 days leave to amend.

B. First Amended Complaint

Karnazes filed a first amended complaint in September 2013, asserting the same causes of action. To the breach of contract and fraud causes of action, she added an allegation that "Citibank" had promised not to sell the Loan, but did so anyway.

Citi again demurred on the ground that the pleading was uncertain and failed to state a cause of action, for the same reasons as the original complaint. In her opposition to the demurrer, Karnazes argued that the defendants already knew the conduct underlying the causes of action and the pleading was "sufficient as it stands," but sought 90 days leave to amend.

In November 2013, the court sustained the demurrer and ordered a second amended complaint to be filed by December 30, 2013.

¹ Citi asserts that Karnazes' failure to serve Citi does not affect this appeal or the proceedings in the trial court. (Citing *Fireman's Fund Ins. Co. v. Sparks Construction Inc.* (2004) 114 Cal.App.4th 1135, 1145.) Karnazes does not contend otherwise.

C. Second Amended Complaint

Karnazes filed a second amended complaint in December 2013, asserting the same causes of action. Citi filed a demurrer on the same grounds. Karnazes opposed the demurrer, again arguing that the defendants were aware of their conduct underlying the pleading, but seeking 60 days leave to amend because she was unable to file a “perfect” third amended complaint before the time of the hearing due to the complex nature of the action, severe problems obtaining records from the defendants, and “old computer files.”

The trial court granted 90 days leave to amend but stated it would not grant further leave if Karnazes again failed to file a complaint that alleged facts to support her causes of action.

D. Third Amended Complaint

Karnazes filed a third amended complaint in July 2014, asserting the same causes of action for intentional tort, negligence, and breach of contract, and this time asserting five fraud claims based on theories of intentional misrepresentation, negligent misrepresentation, concealment, and promise without intent to perform. However, the fraud causes of action in the third amended complaint were only marginally more specific than they were in the second amended complaint, alleging that “Defendants” promised to provide proper mortgage practices under the law and to treat Karnazes fairly, and “Citibank” promised “in or about June 2010” not to sell the note or mortgage documents. Karnazes also added the following allegation: “Plaintiff incorporates herein by reference facts from the First and Third Causes of Action in this complaint.”

Citi filed a demurrer on multiple grounds: the pleading was uncertain; the intentional tort claim failed as a matter of law; the negligence claim failed to allege facts showing that CitiMortgage, Inc., or Citibank, N.A., had a legal duty, and the claim was time-barred to the extent it was based on the sale of the Loan; the breach of contract claim failed because it did not allege a relevant contract; and the fraud claims were not alleged with particularity as to the time, place, nature, and speaker of the alleged fraudulent statements.

In opposing the demurrer, Karnazes again offered virtually no substantive response, but asserted that she had retained competent counsel and requested leave to file a fourth amended complaint.

Then-counsel for Karnazes sought to file supplemental briefing opposing the demurrer. The trial court granted the request, and Karnazes, through her attorneys, filed the further opposition.

Before the hearing on the demurrer, the attorney for Karnazes filed a motion to be relieved as counsel, citing an “irreconcilable conflict” between his law firm and Karnazes, an inability to obtain a signed retainer agreement from Karnazes, and “events . . . which have caused the [law firm’s] associates to feel threatened by [Karnazes] and which have interfered with the firm’s ability to communicate with [Karnazes].” In addition, counsel noted that Karnazes “is a former California attorney and has very strong opinions of exactly how her lawsuit should be prosecuted,” and the law firm did “not agree with [Karnazes] on the tactics, strategies, or causes of action.”

The trial court sustained Citi’s demurrer to the third amended complaint “without leave to amend as to Intentional Tort,” “without leave to amend as to the contract-based causes of action,” and with 20 days leave to amend “to allege fraud with particularity and damages re: promise to keep loan with moving defendants.” The order does not mention the second cause of action for negligence.

Later in September 2014, Karnazes filed a substitution of attorney form by which she agreed to represent herself, and her attorney’s motion to withdraw from the representation was granted.

E. Fourth Amended Complaint

Karnazes filed her fourth amended complaint in October 2014, asserting causes of action against Citi for negligence (second cause of action) and fraud (causes of action four through eight). (Karnazes also alleged intentional tort and breach of contract claims, but not against Citi.)

In the fourth amended complaint, Karnazes added an allegation to the negligence cause of action that defendant “CitiMortgage” and defendant Citibank, N.A., as successor

in interest to other entities, were included in a shorthand term of “CITIBANK.” To the fraud claims, she added the following allegation: “In or around June or July 2010, Plaintiff contacted CITIBANK in person at its Foster City branch location and telephonically at its customer service number (800-283-7918) to inquire about the loan status and non-payment. At this time, Plaintiff spoke with CITIBANK representatives Ruby and Mary, each of whom refused to provide Plaintiff their last names or identification numbers. During these conversations, Plaintiff inquired about the status of the Loan and possibility of her loan being sold. Plaintiff informed her local Foster City CITIBANK branch officers and both Ruby and Mary that it was important to Plaintiff to keep her loan at a federally insured financial institution such as GLENDALE FEDERAL SAVINGS AND LOAN where Plaintiff originally obtained the loan. Plaintiff obtained the Loan with GLENDALE in reliance on the fact that GLENDALE was a federally insured banking institution. Both Ruby and Mary promised Plaintiff that if she did not close her other accounts and remained a loyal customer of CITIBANK, CITIBANK would not sell Plaintiff’s mortgage loan to another lender.” This allegation was false, Karnazes alleged, because “Defendant Citibank” sold the note. As a result of the alleged representation, Karnazes kept her accounts at “Citibank.”

Citi filed a demurrer to the fourth amended complaint. Citi reiterated that Karnazes had no negligence claim, because she failed to allege a duty on the part of the Citi defendants and the claim was time-barred. As to the fraud claims, Citi argued that Karnazes had no claim against CitiMortgage, Inc., to the extent the misrepresentation was made by Citibank, N.A. Further, Karnazes had no fraud claim against Citibank, N.A., because the alleged misrepresentation—that the Loan would not be sold—was a non-actionable statement about a future event.

Karnazes filed an opposition to the demurrer. As to the negligence claim, she did not point to any factual allegations in her fourth amended complaint that gave rise to a legal duty on the part of CitiMortgage, Inc., or Citibank, N.A. Instead, she simply stated: “Citi Defendants[’] argument that the Second Cause of Action for negligence is not proper is without merit. The court overruled their last demurrer to said cause of action.

Plaintiff sufficiently alleged a cause of action for negligence against Citi Defendants.” As to the fraud claims, Karnazes argued that the fourth amended complaint referred to “CitiMortgage” as well as “Citibank.” She further argued: “The promise was not to sell and to keep the relevant documents and debts in-house, consequently Citi Defendants’ argument that the promise was for a future act fails, and the argument was not supported by the authorities cited by Citi Defendants in any case.” She provided no further explanation or substantive argument.

Karnazes asked the trial court for 30 days leave to file a fifth amended complaint, due to the complex nature of the action, problems obtaining records from defendants, “old computer files,” her “lack of experience in this field of law,” and her “hope[] to soon have counsel to represent her.”

In January 2015, the trial court sustained Citi’s demurrer to the fourth amended complaint in its entirety, without leave to amend. The court ruled that the negligence cause of action was barred by the statute of limitations and that Karnazes failed to allege facts regarding a duty of care. The court also ruled that the fraud causes of action were not alleged with the requisite particularity as to each defendant, and that Karnazes failed to “provide any meaningful opposition regarding unavailability of fraud causes of action for representations of future events.”

A judgment of dismissal was entered, and this appeal followed.

II. DISCUSSION

“In our de novo review of an order sustaining a demurrer, we assume the truth of all facts properly pleaded in the complaint or reasonably inferred from the pleading, but not mere contentions, deductions, or conclusions of law. [Citation.] We then determine if those facts are sufficient, as a matter of law, to state a cause of action under any legal theory. [Citation.]” (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751 (*Scott*).

“In making this determination, we also consider facts of which the trial court properly took judicial notice. [Citation.] Indeed, a demurrer may be sustained where judicially noticeable facts render the pleading defective [citation], and allegations in the

pleading may be disregarded if they are contrary to facts judicially noticed. [Citations.]” (Scott, supra, 214 Cal.App.4th at p. 751.)

“In order to prevail on appeal from an order sustaining a demurrer, the appellant must affirmatively demonstrate error. Specifically, the appellant must show that the facts pleaded are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer. [Citation.] We will affirm the ruling if there is any ground on which the demurrer could have been properly sustained. [Citation.]” (Scott, supra, 214 Cal.App.4th at p. 752.)

A. The Demurrer Was Properly Sustained

Karnazes fails to establish that the allegations of her fourth amended complaint state a cause of action for negligence or fraud, or state any other viable cause of action.²

1. Negligence

In support of its demurrer, Citi argued that Karnazes’ second cause of action for negligence was barred by the applicable statute of limitations and did not allege facts giving rise to a legal duty on the part of CitiMortgage, Inc. or Citibank, N.A. The trial court agreed with both points.

a. *Statute of Limitations*

Based on documents that were the subject of Citi’s request for judicial notice, the assignment of deed of trust from CitiMortgage, Inc., to Pacifica was recorded in August 2010. In paragraph 12 of the fourth amended complaint, Karnazes acknowledges that the assignment purportedly occurred at that time.

Because the limitations period for a negligence claim is two years (Code Civ. Proc. § 335.1), the face of the fourth amended complaint establishes that Karnazes’ deadline for filing a negligence claim based on the transfer of the Loan to Pacifica would be two years after August 2010, or August 2012. Karnazes did not file her complaint

² Citi contends in their respondents’ brief that the demurrer was properly sustained to the fourth amended complaint in its entirety because a demurrer may be sustained on the ground of uncertainty. (Code Civ. Proc., § 430.10, subd. (f).) However, Citi did not demur to the fourth amended complaint on this ground, and the court did not cite this ground in sustaining the demurrer.

until March 2013. A complaint showing on its face that the cause of action is time-barred may be dismissed pursuant to a demurrer. (See *Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995.)

Citi acknowledges that Karnazes alleged in the fourth amended complaint that “[o]n or about March 2, 2011, [Karnazes] *learned* that Defendants [herein], who had failed to communicate with her, had breached their duties to Plaintiff and had wrongfully foreclosed on her home” (Italics added.) Citi contends that this allegation—which would put the filing of the original complaint within about two years of her *learning* of Citi’s alleged fraud—is insufficient to render the pleading timely because (1) this general allegation is contradicted by Karnazes’ specific allegations referring to multiple communications *before* March 2011 with iServe, the servicer for the new entity to which the deed of trust was assigned (citing *Skopp v. Weaver* (1976) 16 Cal.3d 432, 437; *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1235–1236); (2) Karnazes did not allege facts which, under the “discovery rule,” would postpone the accrual of the cause of action until she discovered or had reason to discover it (citing *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808); and (3) Karnazes did not allege facts showing equitable tolling (citing *Sagehorn v. Engle* (2006) 141 Cal.App.4th 452, 460).

In her opposition to the demurrer, Karnazes did not explain why her negligence claim was not time-barred or assert theories such as the discovery rule or equitable tolling. Nor does she even mention the issue in her opening brief in this appeal. She fails to establish that the court erred in sustaining the demurrer as to her negligence cause of action.

b. Duty

To state a claim for negligence, a plaintiff must allege, among other things, “a legal duty to use reasonable care.” (*Mendoza v. City of Los Angeles* (1998) 66 Cal.App.4th 1333, 1339.) In support of its demurrer, Citi urged that Karnazes did not allege any facts that could establish a legal duty on the part of CitiMortgage, Inc. or Citibank, N.A. not to sell her loan or otherwise subject it to liability for negligence. According to Citi, a lender has no duty of care to a borrower if the lender’s involvement

in the loan transaction “does not exceed the scope of its conventional role as a mere lender of money.” (*Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.) In addition, no fiduciary relationship arises between a borrower and a lender in the absence of special circumstances. (*Oaks Management Corporation v. Superior Court* (2006) 145 Cal.App.4th 453, 466.)

In her opposition to the demurrer, Karnazes did not explain what facts established any relevant legal duty on the part of CitiMortgage, Inc. or Citibank, N.A., stating only in conclusory terms that Citi’s argument was “without merit” and she had indeed alleged a cause of action. In her opening brief in this appeal, she merely repeats verbatim what she said in her opposition to the demurrer. Karnazes’s failure to present legal argument, and to support a legal argument with a cogent analysis that applies legal authority to the facts of the case, warrants the conclusion that the issue has been abandoned. (See Cal. Rules of Court, rule 8.204(a)(1)(B); *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115–1116; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700.) Karnazes fails to establish that the court erred in sustaining the demurrer as to her negligence cause of action on this ground.³

2. Fraud

Karnazes’ fourth amended complaint purported to assert fraud claims in her fourth (intentional misrepresentation), fifth (negligent misrepresentation), sixth (concealment), seventh (concealment), and eighth (promise without intention to perform) causes of action.

In support of its demurrer, Citi contended that Karnazes failed to state a fraud cause of action against CitiMortgage, Inc., to the extent the alleged misrepresentation was made by Citibank, N.A.; Citi further contended that no cause of action was stated against Citibank, N.A., because the alleged misrepresentation was merely a statement about a

³ Karnazes’ attempt to incorporate arguments she made in the trial court is improper. (*In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 690 fn. 18; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 109.) In any event, she does not point us to any argument in the trial court that had any merit.

future event. In sustaining the demurrer, the trial court noted that the fraud causes of action were not alleged with particularity as to each defendant, and that Karnazes had not provided any meaningful response to Citi's assertion that the causes of action were improperly based on a representation of future events.

a. Particularity

The elements of fraud include a misrepresentation of material fact, knowledge of falsity, intent to induce reliance, justifiable reliance by the plaintiff, and resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (*Lazar*)). To plead a fraud claim, the plaintiff must allege with particularity “ ‘facts which show how, when, where, to whom, and by what means the representations were tendered.’ ” (*Id.* at p. 645.) Against a corporate defendant, the pleading must allege the name of the person who made the representation, his or her authority to speak, to whom he or she spoke, and how the representation was communicated. (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157; see *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1615.) Citi urges that the particularity requirement is germane to all of Karnazes' fraud-related causes of action. (See *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 878; *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184; *Lazar, supra*, 12 Cal.4th at pp. 638, 645.)

The fourth amended complaint alleges that “[i]n or around June or July 2010,” Karnazes spoke with “CITIBANK representatives Ruby and Mary,” who “promised [Karnazes] that if she did not close her other accounts and remained a loyal customer of CITIBANK, CITIBANK would not sell Plaintiff’s mortgage loan to another lender.”

Citi urges that, by alleging that the promise was made “in or around June or July 2010,” Karnazes failed to state with particularity when the statement occurred.

Moreover, Karnazes did not identify who “Ruby and Mary” are: although she claims they were representatives of “CITIBANK,” she included both CitiMortgage, Inc., and Citibank, N.A., within the definition of CITIBANK. It is therefore unknown whether it was CitiMortgage, Inc., or Citibank, N.A., that allegedly employed Ruby or Mary, whether Ruby or Mary were purportedly speaking on behalf of CitiMortgage, Inc., or

Citibank, N.A., or whether Ruby or Mary had authority to speak on behalf of either defendant.

In her opposition to the demurrer and her opening brief in this appeal, Karnazes merely asserts that “the allegations did refer to Citimortgage, as well as Doe Defendants.” But that is exactly why Citi contends the fraud claims are not alleged with particularity: it is unclear whether CitiMortgage, Inc., or Citibank, N.A., purportedly made the fraudulent statement. Karnazes fails to establish that the court erred in sustaining the demurrer as to the fraud causes of action on this ground.

b. Statement About A Future Event

To be actionable for fraud, the alleged misrepresentation must have been made about a past or existing fact; a statement about a future event is merely an opinion. (*Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 607.)

In support of its demurrer, Citi urged that the alleged statement that the Loan would not be sold is merely an opinion expressed about a future event. In addition, we note, Karnazes alleged that the alleged promise not to sell the Loan was false because the Loan was later sold (not specifically because Ruby, Mary, or Citi actually intended to sell the Loan at the time the representation was made).

In opposition to the demurrer and in her opening brief in this appeal, Karnazes merely asserts: “The promise was not to sell and to keep the relevant documents and debts in-house, consequently Citi Defendants’ argument that the promise was for a future act fails, and the argument was not supported by the authorities cited by Citi Defendants in any case.” This conclusory statement does not provide a cogent analysis with citation to legal authority and application of the law to the case. (See *Guthrey, supra*, 63 Cal.App.4th at pp. 1115–1116; *Landry, supra*, 39 Cal.App.4th at pp. 699–700.) As the trial court observed, Karnazes has not provided a meaningful response to the assertion that her fraud causes of action were improperly based on a representation of future events.

At any rate, since the fraud claims were not alleged with particularity, the demurrer was properly sustained on that ground, whether or not it was also proper to sustain the demurrer on this additional ground.

In sum, Karnazes has failed to demonstrate that the trial court erred in sustaining the demurrer to the fourth amended complaint on the ground that the pleading does not state any cognizable cause of action against Citi.⁴

B. Leave to Amend

We review a denial of leave to amend for an abuse of discretion. (See *Debro v. Los Angeles Raiders* (2001) 92 Cal.App.4th 940, 946). To prevail on appeal, an appellant must usually demonstrate a reasonable possibility that the defects in the complaint can be cured by amendment. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Thus, Karnazes must show how the fourth amended complaint could further be amended and how, as so amended, the pleading would state a cause of action. (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 992.)

Karnazes failed to show in the trial court, and fails to show in this court, how she could further amend her pleading to state any cause of action. Although she contends that she “needs to amend the Fourth Amended Complaint to correct mistakes, to include all of the damages that she has suffered, and to properly assert theories of recovery against the defendants,” she does not identify any facts she could allege that would cure the defects of her pleading. While she has complained that she had difficulty with prior counsel and in obtaining records from defendants, the allegations missing from her fourth amended complaint—such as the details of the representations made to her and any facts

⁴ Karnazes asserts: “Although it is not in the form Appellant wanted, the Fourth Amended Complaint still states facts sufficient to constitute a cause of action for negligence, *intentional tort*, *breach of contract*, fraud, and is not uncertain.” (Italics added.) Karnazes, however, did not include in her fourth amended complaint any claim for intentional tort or breach of contract against Citi; nor could she, since those claims were dismissed with prejudice in the ruling on Citi’s demurrer to the third amended complaint. In any event, Karnazes has not shown that the allegations of the fourth amended complaint do, in fact, state a viable cause of action for intentional tort or breach of contract.

indicating a special relationship she had with Citi that would give rise to a relevant legal duty—are facts that should be known to her already. Furthermore, Karnazes, a former attorney, has already filed an original complaint and four amended complaints over a span of approximately 19 months, and even at the time of her opening brief in this appeal—more than three years after she commenced the litigation—she has not set forth what further facts could be alleged.

Karnazes has not shown that the trial court abused its discretion in denying further leave to amend.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.

(A144813)