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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ARDAS (ALEX) YANIK,

Plaintiff and Appellant,

v.

CITY OF DOWNEY,

Defendant and Respondent.

B231506

(Los Angeles County
Super. Ct. No. VC057793)

APPEAL from an order of the Superior Court of Los Angeles County.

Yvonne T. Sanchez, Judge. Affirmed.

Ardas (Alex) Yanik, in pro. per., for Plaintiff and Appellant.

McCune & Harber and Louis E. Marino, Jr. for Defendant and Respondent.

Plaintiff Ardas Yanik sued the City of Downey under several constitutional, statutory and tort theories when the city's refusal to issue unspecified permits caused him to lose a substantial deposit he had made toward the purchase of real property. He appeals from an order of dismissal entered after Downey's demurrer was sustained without leave to amend. He contends the complaint stated viable causes of action and he should have been granted leave to amend. We affirm.

BACKGROUND

We glean the facts from plaintiff's complaint, which we assume to be true. (*Polonsky v. City of South Lake Tahoe* (1981) 121 Cal.App.3d 464, 466.) In April 2008, plaintiff agreed to purchase commercial real property located in Downey, California for \$5.1 million. He tendered a deposit in the amount of \$300,000 into escrow and sought potential tenants for the property prior to applying for a loan to finance the purchase. He also applied for unspecified permits from the city to start several businesses on the property, but the city without justification refused to issue any permit. Because the city would not issue the permits, plaintiff could not secure a loan prior to the close of escrow, and he lost his deposit. He presented a claim to the city for damages, which was rejected.

On December 10, 2010, plaintiff filed a verified complaint against the city alleging causes of action for interference with contract, negligence, conspiracy, intentional infliction of emotional distress, fraud, conversion, violation of Civil Code section 51 and Business and Professions Code section 16750, and violation of several federal and state constitutional rights, including rights to due process, equal protection, and compensation for a public taking. He sought damages, quiet title, and injunctive relief.

The city demurred to the complaint. It argued it was immune from liability pursuant to Government Code sections 815.6, 818.4 and 821.2, the complaint failed to state any cause of action, and the pleading was nonspecific and failed to include any dates by which it could be determined whether applicable limitations periods had expired. The primary thrust of the demurrer was that a public entity is not liable for an injury caused by refusal to issue a permit.

In opposition to the demurrer, plaintiff explained that Downey officials had instituted criminal proceedings against him in the past, alleging he had demolished a historic landmark restaurant without authorization. The city's refusal to issue permits to him in 2008 was further retaliation for the demolition. He argued the city was not immune from liability and otherwise reiterated the complaint's allegations and contended they sufficed.

At the hearing, plaintiff requested leave to amend to allege the city's motivation for denying him permits. He stated: "I have another paper, another documentation, their mayor, their city councilman that is involved in this project, and I have it, signed signature by him that he wanted to take over the property and help us and he fooled the City to go forward with this. It is all documented. [¶] It is not like, Your Honor, something—you need to look at this with a bigger loop. There is a lot of corruption going on here just like City of Bell. I am begging you to give me a chance to demurrer with the 10 days or 20 days and I will prove what I am trying to say. [¶] I am not good on speaking, but I am good on the paperwork. Definitely, definitely there is something trap going on here, Your Honor. They frauded us, not only me the seller of the property also filed and probably you will hear it very soon, and councilman—I mean, counsel knows about that too. There is a serious problem just like is happening in City of Bell, happening in Montebello, now it is happening in Downey. [¶] And furthermore, Your Honor, just to let you know, F.B.I. is getting involved with this. I already interviewed with them." He said, "I should give amended chance to prove to Your Honor that the Court should look at it a different loop to see there is a serious, serious fraud going on and—they should be heard, Your Honor."

After taking the matter under submission, the trial court concluded in a minute order that plaintiff failed to plead a statutory basis for the action or allege detailed facts concerning how the city had erred. It noted that Government Code sections 818.4 and 821.2 immunize a government entity from liability for failure to issue a permit. Finally, the court concluded much of the action appeared to be time barred and the complaint

failed to state facts sufficient to constitute any cause of action. The court sustained the city's demurrer without leave to amend.

Plaintiff timely appealed.

DISCUSSION

I. The City Cannot be Held Liable for Refusing to Issue Permits

When a demurrer is sustained, we review the complaint de novo to determine whether it alleges facts stating a cause of action under any legal theory. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.) "A demurrer tests the legal sufficiency of factual allegations in a complaint. [Citation.] In reviewing the sufficiency of a complaint against a general demurrer, this court treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. This court also considers matters that may be judicially noticed." (*Id.* at pp. 42-43.) "Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show the complaint alleges facts sufficient to establish every element of each cause of action." (*Id.* at p. 43.)

Government Code section 818.4 provides that a public entity is not liable for any injury caused by its refusal to issue a permit where the entity is authorized to determine whether or not such permits should be issued. (See also Gov. Code, § 821.2 ["a public employee is not liable for an injury caused by his . . . failure or refusal to issue . . . any permit"].)

In *Polonsky v. City of South Lake Tahoe, supra*, 121 Cal.App.3d 464, property owners applied to a public entity for building and sewer connection permits, which were denied. Plaintiffs petitioned the superior court for a writ of mandate to compel issuance of the permits, but the court sustained the defendants' demurrer to the petition without leave to amend. On appeal, the plaintiffs contended they could amend the petition to state a cause of action sounding in fraud. The appellate court affirmed the trial court's order, concluding Government Code section 818.4 barred the action. (*Id.* at pp. 466-467.)

In *Burns v. City Council* (1973) 31 Cal.App.3d 999, a licensed real estate broker and general building contractor applied to the City of Folsom for a building permit. The permit was denied. (*Id.* at p. 1001.) The broker filed a complaint for damages against Folsom and others, alleging among other things conspiracy and fraud. The appellate court affirmed the trial court’s decision to sustain the defendants’ demurrer without leave to amend on the ground that Government Code sections 818.4 and 821.2 granted immunity to the city and its employees. (*Id.* at p. 1004.)

Polonsky v. City of South Lake Tahoe and *Burns v. City Council of the City of Folsom* control here. Every cause of action plaintiff alleges is founded on the city’s refusal to issue him unspecified permits. Section 818.4 manifestly bars the claims. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 127.) This is true even when the action sounds in negligence or fraud or alleges conspiracy. (*Polonsky v. City of South Lake Tahoe, supra*, 121 Cal.App.3d at p. 467; *Burns, supra*, 31 Cal.App.3d at p. 1004; see Gov. Code, § 818.8 [public entity not liable for an injury caused by fraud by an employee].)

Plaintiff’s only argument to the contrary, presented without citation to any pertinent authority, is that Government Code section 818.4 does not provide immunity from liability. As stated above, we and at least two other courts disagree.

To the extent plaintiff seeks remedies other than damages, the complaint fails to state any basis for them. Plaintiff cannot obtain quiet title in the subject property because he does not allege he owns it. He cannot obtain injunctive relief because he did not seek a writ of mandate and does not allege what permits he sought, why the city refused to issue them, the circumstances under which they were sought, or whether he complied with applicable laws.

II. Leave to Amend was Properly Denied

“[I]f the plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment. [Citations.]’ [Citations.] . . . [T]he plaintiff bears the burden of showing ‘in what manner [it] can amend [its]

complaint and how that amendment will change the legal effect of [its] pleading.’ [Citation.] The plaintiff may make this showing in the first instance on appeal. [Citation.]” (*Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 971.) We review a denial of leave to amend for abuse of discretion. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.) This is true even if no request to amend the pleading was made below. (Code Civ. Proc., § 472c, subd. (a); *Rakestraw, supra*, 81 Cal.App.4th at p. 43.) “[I]f there is a reasonable possibility the defect in the complaint could be cured by amendment, it is an abuse of discretion to sustain a demurrer without leave to amend.” (*City of Atascadero, supra*, 68 Cal.App.4th at p. 459.)

It was no abuse of discretion to deny plaintiff leave to amend his complaint. At no time did he indicate he could allege additional facts other than vague allegations of fraud against city officials. The facts he did allege affirmatively demonstrated his inability to state any tort, statutory or constitutional claim. Leave to amend was therefore properly denied.

Plaintiff argues that if given leave to amend he could show “there is a serious fraud going on.” He refers to his representations made at the hearing below about unspecified documents purporting to show the city’s mayor was “involved” in the “project,” “wanted to take over the property,” and “fooled the City to go forward.” Construing plaintiff’s representation liberally, we infer he means that Downey’s mayor fraudulently caused the city not to issue permits because he wanted the subject property for himself. Such allegations would not save the complaint because “[a] public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional.” (Gov. Code, § 818.8; see *Polonsky v. City of South Lake Tahoe, supra*, 121 Cal.App.3d 464 at p. 467 [immunity from fraud claims]; *Burns v. City Council of the City of Folsom, supra*, 31 Cal.App.3d at p. 1004 [same].)

Leave to amend was therefore properly denied.

DISPOSITION

The order of dismissal is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.