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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CLAUDIA JACQUELINE ACEVES,

Plaintiff and Appellant,

v.

U.S. BANK, N.A., et al.,

Defendants and Respondents.

B249717, B252104, B253718

(Los Angeles County
Super. Ct. No. BC410890)

APPEALS from judgments of the Superior Court of Los Angeles County.

Michael L. Stern, Judge. Affirmed.

Dennis Moore for Plaintiff and Appellant.

Wright, Finlay & Zak, T. Robert Finlay and Charles C. McKenna for Defendant and Respondent U.S. Bank, N.A.

Jeffer Mangels Butler & Mitchell and Michael J. Hassen for Defendant and Respondent Sand Canyon Corporation.

Jeffrey D. Nadel for Defendant and Respondent Hector Martinez.

Claudia Aceves sued U.S. Bank, N.A. on grounds of fraud and promissory estoppel when it foreclosed on her home after negotiations to modify the terms of her home loan failed. A jury found that U.S. Bank was not liable to Aceves.

After the judgment had been entered against her, Aceves filed a cross-complaint against Hector Martinez, the mortgage broker who handled her loan application, and Sand Canyon Corporation, the successor of the company that underwrote the loan. In her cross-complaint, Aceves alleged fraud in the submission and processing of her loan application. Martinez and Sand Canyon demurred, and the trial court sustained the demurrer.

Aceves appeals the judgment against her following the trial with U.S. Bank, contending that the trial court erred in evidentiary rulings at trial and in awarding attorney fees to U.S. Bank. She likewise appeals the trial court's judgment sustaining the demurrer in favor of Martinez and Sand Canyon.

FACTS AND PROCEEDINGS BELOW

In 2006, Aceves refinanced her home in Granada Hills with a loan of \$845,000 from Option One Mortgage Corporation, the predecessor company of Sand Canyon. Hector Martinez was the broker for the loan. Aceves's loan application indicated that she worked as a manager for a plumbing company called The Man Repipes, with income of \$15,000 per month. In fact, she testified that she was unemployed at the time, and that her only income was \$4,500 per month in Social Security disability benefits. Her husband was a co-owner of The Man Repipes and his business partner falsely verified Aceves's employment there. False pay stubs and a W-2 tax form documenting Aceves's claimed income accompanied the application. According to her tax returns, Aceves and her husband together earned \$31,200 for the entire year 2006.

By 2008, Aceves was unable to make the payments on the loan, and she filed for Chapter 7 bankruptcy protection. In December 2008, U.S. Bank obtained relief from the automatic stay in bankruptcy, foreclosed on Aceves's home, and purchased the home in a foreclosure sale.

Aceves filed suit against U.S. Bank in April 2009, alleging causes of action for quiet title, slander of title, fraud, promissory estoppel, declaratory relief, to set aside the trustee's sale, and to cancel the trustee's deed upon sale. U.S. Bank filed a demurrer, which the trial court sustained. We reversed the trial court on appeal, holding that the complaint had alleged valid causes of action for fraud and promissory estoppel. (*Aceves v. U.S. Bank, N.A.* (2011) 192 Cal.App.4th 218, 225.) Aceves claimed that American Home Mortgage Services (AHMS), the servicer of the loan on behalf of U.S. Bank, misled Aceves regarding her eligibility for a loan modification, causing her to file for Chapter 7 bankruptcy rather than Chapter 13, under which Aceves might have been able to keep her home. According to Aceves, AHMS then refused to make a reasonable offer of a loan modification. The case proceeded to trial, where a jury found in favor of U.S. Bank.

After trial, the court granted U.S. Bank leave to file a cross-complaint alleging fraud and negligent misrepresentation by Aceves. Without obtaining leave of the court, Aceves filed a cross-complaint of her own against Martinez and Option One in December 2012, claiming causes of action for fraud and unfair business practices, among others. Aceves contended that her loan application had been altered without her knowledge so that she could qualify for the loan. She claimed that Option One looked the other way and failed to detect the fraud so that it could profit by subsequently selling the loan as part of a mortgage-backed security.

U.S. Bank dismissed its own cross-complaint against Aceves. Martinez and Sand Canyon filed demurrers to Aceves's cross-complaint. The trial court sustained the demurrers without leave to amend, concluding that Aceves's claims were barred under the statute of limitations and as res judicata.

DISCUSSION

In her appeal, Aceves raises several issues. First, she contends the trial court erred by allowing U.S. Bank to introduce evidence of the false information included in Aceves's loan application, on the grounds that it was irrelevant to her loan modification negotiations. Next, she argues that she should have been permitted to introduce evidence of emotional distress in her trial. Additionally, she argues that U.S. Bank was not entitled to an award of attorney fees after prevailing in her trial. Finally, Aceves contends that the trial court erred by sustaining the demurrer to her cross-complaint, claiming that the complaint alleged a valid cause of action for fraud, and that her claims were not barred by res judicata or the statute of limitations. We find all of Aceves's claims to be meritless and accordingly affirm the judgment of the trial court.

I. *Evidence of False Information in the Loan Application*

Aceves filed a motion in limine to prevent U.S. Bank from introducing evidence regarding false information Aceves provided as part of her loan application. She claimed that this evidence was irrelevant to the loan modification negotiations that formed the basis of her case, and that it was more prejudicial than probative. U.S. Bank countered by arguing that Aceves's conduct in obtaining the loan was relevant to its unclean hands defense. The trial court denied Aceves's motion, and at trial, U.S. Bank elicited testimony from Aceves in which she admitted that, contrary to her loan application, she was not general manager of her husband's company and earned far less than \$15,000 per month at the time she obtained the loan.

On appeal, Aceves argues that the evidence surrounding Aceves's loan application was more prejudicial than probative, and should have been excluded pursuant to Evidence Code section 352. She contends that the evidence should not have been admitted for the purpose of U.S. Bank's unclean hands defense because her loan application was not directly related to her loan modification negotiations, and "[t]he misconduct that brings the unclean hands doctrine into play must relate directly to the

transaction concerning which the complaint is made.” (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 984.)¹

In support of her argument, Aceves relies primarily on *Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031 (*Garcia*), in which the plaintiff borrowers brought a promissory estoppel claim against their mortgage lender when the lender foreclosed on the plaintiffs’ home during negotiations to restructure the loan. (*Id.* at pp. 1034-1036.) The lender claimed that the plaintiffs were precluded from bringing their claim under the doctrine of unclean hands, because they misrepresented in their loan application that they intended to reside in the home. (*Id.* at pp. 1043-1044.) The court rejected this argument, stating that “[n]either in its brief on appeal nor in its moving papers below has respondent made clear the connection, if any, between any possible misrepresentation in the loan application and the claims asserted here. Moreover, the decision whether to apply the defense based on the facts presented is a matter within the trial court’s discretion. (Citation.) The trial court issued no ruling on this point, and we will not do so for the first time on appeal.” (*Id.* at p. 1044.)

Despite the similarity of the subject matter in *Garcia*, that case does not support Aceves’s position. Unlike in *Garcia*, there is a clear connection here between the loan application and the subsequent modification negotiations. In 2006, Aceves filed a loan application that misstated her employment status and exaggerated her income. As a direct result of obtaining a loan with payments she could not afford to make, she filed for bankruptcy and sought a loan modification just two years later. Furthermore, whereas the trial court in *Garcia* had not reached the issue of unclean hands (*Garcia, supra*, 183 Cal.App.4th at p. 1044), here, the trial court did rule on the issue. We hold

¹ At oral argument, Aceves argued that the unclean hands defense was not applicable because she sought relief of a legal, rather than equitable nature. In California, however, “the equitable defense of unclean hands is available . . . as a defense to a legal action.” (*Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 728; accord *Kendall-Jackson Winery, Ltd. v. Superior Court, supra*, 76 Cal.App.4th at p. 978; 13 Witkin, Summary of Cal. Law (10th ed. 2005), § 9, p. 290.)

that it was well within its discretion in applying the unclean hands defense and admitting evidence of Aceves's actions in obtaining the loan. (*Aguayo v. Amaro* (2013) 213 Cal.App.4th 1102, 1109; *Garcia, supra*, 183 Cal.App.4th at p. 1044 [“the decision whether to apply the defense based on the facts presented is a matter within the trial court’s discretion”].)

II. *Exclusion of Evidence of Emotional Distress*

Prior to trial, U.S. Bank filed a motion in limine to exclude evidence of emotional distress Aceves suffered, on the ground that Aceves could not recover for emotional distress under a cause of action for promissory estoppel or fraud. The trial court granted the motion. On appeal, Aceves argues that this was error, and that a plaintiff is indeed permitted to recover for emotional distress under these theories.

We need not reach the merits of the issue, because any error was harmless. To succeed on appeal, an appellant must “show that the error was prejudicial (Code Civ. Proc., § 475) and resulted in a ‘miscarriage of justice’ (Cal. Const., art. VI, § 13).” (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069.) A “‘miscarriage of justice’ should be declared only when the court, ‘after an examination of the entire cause, including the evidence,’ is of the ‘opinion’ that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*People v. Watson* (1956) 46 Cal.2d 818, 836.) Here, there was no possibility that Aceves would have obtained a more favorable result if the trial court had admitted evidence of her emotional distress. That evidence would have been relevant only as a way to measure Aceves’s damages. Because the jury found that U.S. Bank was not liable to Aceves, there was no reason to consider damages she might have suffered through emotional distress or any other means.

III. *Attorney Fees*

After trial, U.S. Bank filed a motion for attorney fees. Aceves did not file an opposition. At the hearing regarding attorney fees, Aceves’s lawyer did not make any argument that the attorney fee provisions in the note or deed of trust did not apply to Aceves’s suit. The trial court granted the motion and awarded U.S. Bank \$133,006.

Aceves now argues that the award of attorney fees should be overturned because her suit for promissory estoppel and fraud did not fall within the attorney fee provisions of the note or deed of trust she signed. She did not make these arguments before the trial court, and they are therefore forfeited on appeal. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564 [“““[I]t is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court.’ Thus, ‘we ignore arguments, authority, and facts not presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived. [Citations.]”””].)

IV. *Demurrer to Aceves’s Cross-Complaint*

The trial court sustained Martinez’s and Sand Canyon’s demurrers to Aceves’s cross-complaint because, among other reasons, the cross-complaint was time-barred. In her cross-complaint, Aceves alleged that her mortgage application had been altered so that she could qualify for the loan, and that Sand Canyon had failed to apply systems to detect and thwart the fraud. Aceves applied for the loan in 2006. She filed her counterclaim against Martinez and Sand Canyon in 2012. The statute of limitations for fraud is three years. (Code Civ. Proc, § 338, subd. (d).)

Aceves contends that her cross-complaint is not time-barred because she did not discover, nor did she have reason to discover, the fraud until U.S. Bank filed its own cross-complaint against her in 2012. Under Code of Civil Procedure section 338, subdivision (d), “The cause of action in [a case of fraud] is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.” Courts have interpreted this delayed discovery rule to mean that “the statute of limitations in a cause of action for fraud ‘commences to run after one has knowledge of facts sufficient to make a reasonably prudent person suspicious of fraud, thus putting him on inquiry.’” (*Cleveland v. Internet Specialties West, Inc.* (2009) 171 Cal.App.4th 24, 31.)

The evidence in this case unequivocally shows that Aceves knew or should have known long before 2012 of the facts that she claims constituted fraud. Aceves claims

that Martinez committed fraud by substituting a typed mortgage application containing inaccurate information for her own handwritten mortgage application. Yet she admitted initialing every page and signing the typed mortgage application that contained the false information. Thus, by Aceves's own admission, the evidence of the alleged fraud was literally placed in front of her in 2006.

Nevertheless, Aceves argues that her cross-complaint was not time-barred because the statute of limitations does not begin to run until "the time when the cause of action is complete with all of its elements." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.) She claims that the cause of action was not complete until December 2012, because that was when she suffered emotional distress when U.S. Bank filed its cross-complaint against her. Aceves claims that she had not been harmed by the alleged fraud until that moment. In fact, Aceves filed for bankruptcy in 2008 and lost her house shortly thereafter. In her complaint against U.S. Bank, she alleged that these events caused her emotional distress. All of these events came as a consequence of the inaccurate loan application. Thus, Aceves had suffered damages no later than 2008, more than four years before she filed her cross-complaint. Aceves's cross-complaint was time-barred.

DISPOSITION

The judgments are affirmed. Respondents shall recover their costs of appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.