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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SHAROL DENISE JOHNSON,

Plaintiff and Appellant,

v.

WELLS FARGO BANK, N.A.,
as Trustee etc. et al.,

Defendants and Respondents.

B261592

(Los Angeles County
Super. Ct. No. BC511478)

APPEAL from a judgment of the Superior Court of Los Angeles County. Marc Marmaro, Judge. Affirmed.

Sharol Denise Johnson, in pro. per., for Plaintiff and Appellant.

Robert W. Norman, Jr., and Eileen M. Horschel for Defendants and Respondents.

Sharol Denise Johnson appeals from the judgment entered after the trial court sustained without leave to amend the Wells Fargo Bank, National Association, as Trustee etc. et al. (defendants), demurrer to Johnson's second amended complaint because all her claims were time-barred. We agree and thus affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On May 15, 2006, appellant Sharol Denise Johnson executed a deed of trust securing a promissory note in the amount of \$408,000 in order to purchase the property located at 40516 Milan Street, Palmdale, California 93551 (Property). Less than two years later, Johnson defaulted on her loan, and, on April 7, 2008, the trustee recorded a notice of default, indicating that Johnson was in arrears \$27,276.30. Johnson did not cure the default, and the trustee filed a notice of trustee sale on March 24, 2009, setting the sale date for April 14, 2009. Johnson then owed \$496,981.05. The foreclosure sale was held on June 15, 2009 and recorded on June 17, 2009.

On June 7, 2013, Johnson, in pro. per., filed her complaint alleging the following causes of action: (1) wrongful foreclosure; (2) breach of contract; (3) violation of Business & Professions Code section 17200 et seq.; (4) unjust enrichment; and (5) slander of title. On January 3, 2014, the trial court sustained defendants' demurrer to the first, second, third and fifth causes of action with leave to amend, and the fourth cause of action without leave to amend. On January 10, 2014, Johnson filed her first amended complaint. On October 8, 2014, the trial court sustained defendants' demurrer to the remaining causes of action with leave to amend. On October 17, 2014, Johnson filed a second amended complaint. On November 14, 2014, defendants demurred to the second amended complaint. On January 9, 2015, the trial court sustained the demurrer without leave to amend and entered a judgment of dismissal. Johnson timely appealed.

STANDARD OF REVIEW

When reviewing a judgment of dismissal after a demurrer is sustained without leave to amend, an appellate court “must assume the truth of the complaint’s properly pleaded or implied factual allegations.” (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) The court “must also consider judicially noticed matters.” (*Ibid.*) If the demurrer was sustained without leave to amend, the reviewing court “must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment.” (*Ibid.*) If an amendment can cure the defect, plaintiff may be given a chance to amend.

DISCUSSION

1. *First Cause of Action (Wrongful Foreclosure)*

The trial court sustained the demurrer to Johnson’s first cause of action for wrongful foreclosure because it was time-barred. We agree with the trial court.

The statute of limitations for wrongful foreclosure is three years. (Code Civ. Proc., § 338, subd. (a).)¹ Johnson’s property was sold at the foreclosure sale on June 15, 2009, and the sale was recorded on June 17, 2009. The three-year statute of limitations began to run on June 17, 2009 and expired on June 17, 2012. Johnson did not file her initial complaint in this action until June 7, 2013, almost one year after the limitations period expired.

One exception to the general rule regarding accrual of a cause of action is the delayed discovery rule, under which accrual is postponed until the plaintiff “discovers, or has reason to discover, the cause of action.” (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 389.) Discovery of the cause of action occurs when the plaintiff is put on notice, or has reason to suspect a factual basis for the action. (*Ibid.*) To take advantage of the delayed discovery rule, however, a plaintiff must plead with specificity the circumstances under which she made the discovery and must show that any delay in discovering the

¹ All subsequent statutory references are to the Code of Civil Procedure unless otherwise noted.

claim is ““consistent with the requisite diligence.”” (*Phelps v. Grady* (1914) 168 Cal. 73, 78.)

Johnson contends that, because she “was homeless and had sustained injuries which precluded her from learning or becoming aware of her rights in respect[] to her claim against defendants,” she was excused from filing her claim earlier. But Johnson never claimed in the trial court or on appeal that she was unaware of the alleged fraud or that she was delayed in discovering the facts underlying her action. Accordingly, we agree with the trial court that the delayed discovery rule did not apply to her wrongful foreclosure claim, and, because the claim was filed more than three years after it accrued, it was time-barred.²

2. *Second Cause of Action (Breach of Contract)*

The trial court properly found that Johnson’s second cause of action was time-barred.

The statute of limitations for breach of a written contract is four years. (§ 337, subd. (1).) Johnson alleges that the deed of trust is the underlying contract, and defendants breached the contract by foreclosing on the property without first complying with certain Civil Code requirements, including requirements related to the notice of trustee’s sale, which was recorded on March 24, 2009. Johnson did not file her original complaint until June 7, 2013, more than four years after the alleged breach occurred, and failed to allege sufficient facts, as explained above, to excuse the delay. Accordingly, her breach of contract claim is barred by the statute of limitations.³

² The trial court noted that, even if the claim was not time-barred, Johnson’s wrongful foreclosure claim failed because Johnson did not plead tender of the secured amount of indebtedness and defendants had no duty to modify the loan. Because we find that Johnson’s claim of wrongful foreclosure is time-barred, we need not reach these other issues.

³ The trial court noted that, even if the claim was not time-barred, Johnson’s breach of contract claim failed because she defaulted on her mortgage and did not plead any excuse for her non-performance, an essential element in a breach of contract claim. Because we find that Johnson’s claim of breach of contract is time-barred, we need not reach this issue and other issues raised by the parties.

3. *Third Cause of Action (Bus. & Prof. Code, § 17200 et seq.)*

The trial court properly found that Johnson's third cause of action failed to state a claim.

Business and Professions Code section 17200 et seq. prohibits, and provides civil remedies for, unfair competition, which it defines as ““any unlawful, unfair or fraudulent business act or practice.”” (*Bower v. AT&T Mobility, LLC* (2011) 196 Cal.App.4th 1545, 1553.) Although section 17200 contains “sweeping language” as to what is considered a business practice, standing to sue under the statute, is conferred only upon any ““person who has suffered injury in fact and has lost money or property” as a result of unfair competition [citations].”” (*Id.* at p. 1554.) A plaintiff must ““(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., *economic injury*, and (2) show that the economic injury was the result of, i.e., *caused by*, the unfair business practice or false advertising that is the gravamen of the claim.” [Citation.]” (*Ibid.*) As to the injury in fact, or economic injury, requirement, the injury must be ““an invasion of a legally protected interest which is (a) concrete and particularized, [citations]; and (b) ‘actual or imminent, not “conjectural” or “hypothetical,”” [citations].” [Citation.]” (*Ibid.*)

Here, Johnson did not, and could not, plead injury-in-fact because she cannot show a causal connection between defendants' alleged violation of the statute and her injury-in-fact—*i.e.*, her loss of property following the foreclosure. As the trial court noted, the cause of the foreclosure was Johnson's failure to make her loan payments and not any fraudulent or deceptive practice on the part of the defendants.

4. *Fourth Cause of Action (Slander of Title)*

The trial court properly found that Johnson's fourth cause of action was time-barred.

The statute of limitations for slander of title is three years. (§ 338, subd. (g).) Johnson bases this cause of action on the recording of the notice of default, notice of trustee sale and trustee's deed upon sale, the last of which was recorded on June 17, 2009. Accordingly, Johnson's cause of action for slander of title accrued no later than

June 17, 2009, and expired three years later, on June 17, 2012. Johnson's complaint, however, was not filed until June 7, 2013, and Johnson proffered insufficient facts to toll the statute of limitations based on delayed discovery.⁴

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.

⁴ The trial court found that, even if Johnson's claim was not time-barred, Johnson's slander of title claim still failed because she did not plead that defendants acted with malice, which is required in the context of a privileged communication (*e.g.*, a notice of default and notice of trustee's sale). Because we find that Johnson's slander of title claim is time-barred, we need not reach these other issues.