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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Calaveras)

BERNICE ERWIN,

Plaintiff and Appellant,

v.

CALAVERAS COUNTY BOARD OF
SUPERVISORS et al.,

Defendants and Respondents.

C069192

(Super. Ct. No. 11CV37386)

Plaintiff Bernice Erwin filed a petition for writ of administrative mandamus against defendants Calaveras County Board of Supervisors, Planning Commission, Planner Debra Lewis, and Department of Public Works (sometimes collectively referred to as defendants) alleging they violated her constitutional rights when they issued a notice of violation against a parcel of land she purportedly acquired by gift deed (parcel 29) in 1984, and thereafter conditioned approval of her tentative parcel map on completion of improvements to roads accessing the property (Condition II-1) in 1995.

Defendants demurred, arguing plaintiff's claims were barred by the applicable statute of limitations, and by principles of res judicata and collateral estoppel, as the issues essential to her claims were previously decided against her in two prior federal actions she filed against the same parties. The trial court sustained the demurrer without leave to amend and dismissed the lawsuit.

Plaintiff appeals, claiming the trial court erred both in sustaining the demurrer and in denying her leave to amend the writ petition. As we explain, the trial court concluded correctly that plaintiff's claims are barred by the statute of limitations. Plaintiff's claims accrued on April 17, 1995, when defendants adopted her tentative parcel map subject to Condition II-1, after which plaintiff had 90 days to challenge the condition. The trial court also correctly concluded that plaintiff's claims regarding the notice of violation are barred by res judicata and collateral estoppel, as those claims have already been decided against her in her prior lawsuits against these defendants. Finally, because plaintiff has not demonstrated a possibility of correcting those defects through amendment, the trial court properly sustained defendants' demurrer without leave to amend. We affirm the judgment.

FACTS AND PROCEEDINGS

This litigation finds its origins in 1981, when Louie and Susie Peirano (the Peiranos), both now deceased, applied to the County of Calaveras (County) to subdivide their approximately 20-acre parcel to create two parcels, each approximately five acres in size, and a remainder, and purported to transfer by gift deed one of the parcels to Susan Reid (the Reid parcel) and the other to plaintiff (parcel 29), retaining the remainder for themselves.

Defendant County approved the division creating the Reid parcel, but not that creating parcel 29, having found plaintiff paid for road improvements for the Peiranos in contravention of the requirements for a gift deed transfer. On November 5, 1981,

defendant Planning Commission authorized recordation of a notice of violation on parcel 29 (notice of violation) after finding it to be in violation of both the Subdivision Map Act (Gov. Code, § 66410 et seq.) and the Calaveras County Subdivision Ordinance based on inadequate access for development of the proposed parcel. On April 23, 1984, defendant Planning Commission's decision was upheld on appeal by defendant Board of Supervisors, and the notice of violation was thereafter recorded on May 24, 1984.

In 1988, plaintiff quitclaimed her interest in parcel 29 to her son, Jimmie Don Erwin, thereafter acting as his agent and power of attorney with respect to the property.

The 1991 Federal Complaint

In May 1991, plaintiff filed a complaint in the United States District Court for the Eastern District of California, case No. CV-F-91255 (the 1991 federal complaint), including as defendants Calaveras County Board of Supervisors, Planning Department, and numerous individually-named County employees. The 1991 federal complaint alleged claims of due process, equal protection, and discrimination under 42 U.S.C. section 1983 (hereafter § 1983), and takings, all arising out of the notice of violation and defendant County's denial of the proposed subdivision of parcel 29.

The district court dismissed the amended 1991 federal complaint with prejudice. The Ninth Circuit Court of Appeals affirmed, concluding plaintiff's claims were barred by the one-year statute of limitations applicable to section 1983 claims.

The 1994 Federal Complaint

In early 1994, plaintiff submitted an application for a tentative parcel map to legally separate parcel 29 from the Reid parcel. In April 1994, the County Planning Commission approved plaintiff's tentative parcel map subject to Condition II-1, a condition requiring plaintiff to improve and maintain certain roads providing access to and from Parcel 29. Plaintiff appealed for a waiver of Condition II-1.

In the meantime, on October 4, 1994, plaintiff filed her second complaint in the United States District Court for the Eastern District of California, case No. CV-F-946014 (the 1994 federal complaint), including as defendants Calaveras County Board of Supervisors, Planning Department, Department of Public Works, and numerous individually-named County employees. The 1994 federal complaint alleged civil rights violations under section 1983, fraud, misrepresentation, and conspiracy, all arising out of the notice of violation and defendant County's denial of the proposed subdivision of parcel 29.

On February 7, 1995, Jimmie Don Erwin quitclaimed a 1/8th interest in parcel 29 back to plaintiff.

On April 17, 1995, the Calaveras County Board of Supervisors adopted Condition II-1 to plaintiff's tentative parcel map.

On September 11, 1995, the district court dismissed all section 1983 claims arising more than one year prior to the filing of the complaint, as well as those claims relating to development of parcel 29 which accrued prior to February 1995 (when plaintiff obtained a 1/8th interest in the property via the quitclaim deed from her son). The court granted plaintiff leave to amend the complaint to state any section 1983 claims accruing after she acquired an interest in parcel 29 in February 1995. Plaintiff elected not to amend her complaint.

The County and other defendants moved for summary judgment of the fourth amended 1994 federal complaint. On July 24, 1996, with the exception of certain of the individually-named County employee defendants, the district court granted summary judgment in favor of the County.

The 1995 State Complaint

On December 18, 1995, plaintiff filed a complaint in the Calaveras County Superior Court, case No. 22449 (the 1995 state complaint), including as defendants

Calaveras County Board of Supervisors, Planning Commission, Department of Public Works, and planner Susan Larson. The 1995 state complaint alleged inverse condemnation, intentional tort, fraud, taking, and conspiracy, and seeking to quiet title, all arising from defendants' denial of plaintiff's appeal regarding Condition II-1.

On December 22, 1997, the trial court dismissed plaintiff's 1995 state complaint for delay in prosecution (Code Civ. Proc., § 583.420).

The Petition for Writ of Administrative Mandamus

On December 16, 2010, plaintiff filed a notice of intent to sue with defendant Calaveras County Board of Supervisors and defendant Planning Commission regarding the notice of violation and adoption of Condition II-1.

On February 14, 2011, plaintiff filed her petition for writ of administrative mandamus against defendants Calaveras County Board of Supervisors, Planning Commission, Department of Public Works, and planner Debra Lewis. The Writ petition alleged fraud, misrepresentation, discrimination, "violation of laws, and [defendants] acting outside their authority," all relating to the notice of violation, defendants' denial of the proposed subdivision of parcel 29, and the adoption of Condition II-1.

On June 9, 2011, the trial court sustained defendants' demurrer without leave to amend on the grounds that the acts alleged in the writ petition were barred by the 90-day statute of limitations (Gov. Code, § 66499.37), and alternatively by res judicata and collateral estoppel based on plaintiff's 1991 and 1994 federal complaints.

DISCUSSION

We begin first with a discussion regarding the claims presented in this appeal. Plaintiff, appearing on her own behalf, submits arguments that are sometimes rambling and often made without any analysis or citation to material portions of the record. While we are mindful that plaintiff appears without the benefit of counsel, "mere self-representation is not a ground for exceptionally lenient treatment" and, except when

provided otherwise, “the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

An appellant must present an analysis of the facts and legal authority on each point made, and must support the analysis with appropriate citations to the material facts in the record. If an appellant fails to do so, the argument is forfeited. (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

Plaintiff’s first three arguments are entitled “Regarding Pleadings,” “Switching the Burden of Proof,” and “Appellant Has Fundamental Rights,” respectively. None of these headings describe a cognizable issue on appeal. (*Lady v. Worthingham* (1942) 55 Cal.App.2d 396, 397; *Richard v. Richard* (1954) 123 Cal.App.2d 900, 902, 903.) The lack of appropriate headings is compounded by the fact that the arguments assert various kinds of error without either identifying the procedural context of the error or citing appropriate authority in support of the claimed error. Moreover, plaintiff’s arguments are difficult to understand and unsupported by legal or factual analysis. As a reviewing court, we may disregard evidentiary contentions not supported by proper page cites to the record. (*Aguimatang v. Cal. State Lottery* (1991) 234 Cal.App.3d 769, 796.) We may also disregard contentions not supported by legal or factual analysis. (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19 [reviewing court may disregard contentions not adequately briefed, e.g., claims perfunctorily asserted without development]; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3; *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979; *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 [where appellant asserts point without argument or authority, “it is deemed to be without foundation and requires no discussion by the reviewing court”].) These claims are forfeited.

Although plaintiff's fourth argument, entitled "The Court Erred in Sustaining the Demurrer Without Leave to Amend," provides sufficient citation to authority, it is devoid of analysis or citation to the record and is thus forfeited as well. (*County of Solano v. Vallejo Redevelopment Agency, supra*, 75 Cal.App.4th at p. 1274.)

Plaintiff's fifth argument, entitled "The Demurrer to the Complaint Lacked Merit," is similarly lacking in coherent analysis or citation to material facts in the record, simply accusing the trial court of refusing to consider the causes of action, or to provide reasons for its ruling or guidance on how the complaint might be amended. Plaintiff's fifth claim is forfeited as well, both due to form and to plaintiff's failure to object in the trial court. (*Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1128, fn. 4.) We nonetheless point out that the trial court did indeed state its reasons for sustaining the demurrer, explaining that the acts alleged in the writ petition were "barred by the ninety day statute of limitations set forth in Government Code [section] 66499.37," and "by res judicata and collateral estoppel based on [plaintiff's] [1991 federal complaint] and [1994 federal complaint], . . . and opinions and orders therein." We further note that the court is under no compulsion to instruct any litigant, whether or not represented by counsel, as to how to correct deficiencies in their pleading.

Plaintiff's sixth and final argument, entitled "Regarding 'Answer to Respondents' Demurrer' pleading," itself contains several claims. The first claim avers defendants' fraud is ongoing, thus precluding a statute of limitations defense. The second claim argues the principles of res judicata and collateral estoppel do not apply because a court has never determined the validity or legality of the notice of violation, the road improvements required by Condition II-1, the tentative parcel map for parcel 29, or the Subdivision Map Act. The final claim asserts planner Debra Lewis made knowing misrepresentations regarding parcel 29 on which plaintiff relied to her detriment. Like plaintiff's other arguments, these claims lack the support of cogent analysis or citation to material portions of the record.

We nonetheless discuss below the defenses of statute of limitations, and res judicata and collateral estoppel, with the hopes of laying to rest plaintiff's claims regarding parcel 29, the notice of violation, and Condition II-1, once and for all.

I

Standard of Review

“Our only task in reviewing a ruling on a demurrer is to determine whether the complaint states a cause of action.” (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) “On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed ‘if any one of the several grounds of demurrer is well taken. [Citations.]’ [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

Since a demurrer raises pure questions of law, we consider the matter de novo with no deference to the trial court's ruling. (*Parsons v. Tickner* (1995) 31 Cal.App.4th 1513, 1521.) Accordingly, “. . . we do not review the validity of the trial court's reasoning, but only the propriety of the ruling itself.” (*Orange Unified School Dist. v. Rancho Santiago Community College Dist.* (1997) 54 Cal.App.4th 750, 757.) We must affirm if the trial court's decision to sustain the demurrer is correct on any theory. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742; *Kennedy v. Baxter Healthcare Corp.* (1996) 43 Cal.App.4th 799, 808.)

II

Statute of Limitations

Plaintiff's writ petition alleges her claims accrued on December 22, 2010, the date the County replied to her notice of intent to sue and communicated to her its "final decision" that her claim would not be considered because it was not presented within the one-year statute of limitation governing actions brought under section 1983.

The writ petition, at its essence, challenges the 1984 imposition of the notice of violation and defendants' subsequent adoption of Condition II-1 on April 17, 1995.

Government Code section 66499.37 provides that "[a]ny action or proceeding to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision, or of any of the proceedings, acts, or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, including, but not limited to, the approval of a tentative map or final map," must be brought "within 90 days after the date of the decision," after which, "all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision or of the proceedings, acts, or determinations." (Gov. Code, § 66499.37.) By its terms, Government Code section 66499.37 applies "to *any* action involving a controversy over or arising out of the Subdivision Map Act." (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 23.)

Defendant Planning Commission approved plaintiff's application for a tentative parcel map subject to Condition II-1 in April 1994. Plaintiff appealed for a waiver of that condition and, on April 17, 1995, defendant Calaveras County Board of Supervisors denied that appeal and adopted Condition II-1 by Resolution No. 95-113 issued that same day. It was then that plaintiff's claims challenging defendants' decision accrued, after which she had 90 days within which to file her claim. (Gov. Code, § 66499.37.)

To the extent the writ petition purports to raise section 1983 claims, those claims accrued, at the latest, on December 18, 1995, the date plaintiff knew about defendants' decision denying her appeal and adopting Condition II-1 (*TwoRivers v. Lewis* (9th Cir. 1999) 174 F.3d 987, 991 [civil rights claim accrues when the plaintiff knows or should know of the injury that forms the basis of the cause of action]), as evidenced by the filing of her 1995 state complaint alleging claims arising out of that decision. (*Wilson v. Garcia* (1985) 471 U.S. 261, 279-280.) Plaintiff had one year from that date to file her claim. (Code Civ. Proc. former § 340, subd. (3); *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 323.)

Plaintiff filed her writ petition on February 14, 2011, well over 15 years after the expiration of either the 90-day or the one-year limitation period. There can be no doubt that her claims are barred by any applicable statute of limitation.

Plaintiff claims, without proper analysis or citation to material portions of the record, that because defendants' fraud is ongoing, they are precluded from asserting a statute of limitations defense. The claim lacks merit.

The elements of fraud are (1) a false misrepresentation or concealment of a material fact; (2) scienter or knowledge of the falsity; (3) intent to induce reliance; (4) justifiable reliance; and (5) resulting damage. (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1108, superseded by statute on other grounds as stated in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854; 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 772, p. 1121.) Aside from the issue posed by absolute immunity for legislative acts, the writ petition fails to allege that defendants had knowledge of the falsity of a particular misrepresentation, or that they intended to defraud plaintiff by inducing plaintiff's reliance on such misrepresentation. Thus, plaintiff fails to state a claim for fraud, let alone show that the alleged fraud is continuing such that a statute of limitations defense is precluded.

The trial court’s decision to sustain the demurrer on the basis that plaintiff’s claims are barred by the applicable statutes of limitations was correct.

III

Res Judicata and Collateral Estoppel

Plaintiff contends, albeit without any analysis or authority, that there are no judgments or orders in the record showing her claims have previously been adjudicated. She fails to acknowledge the history of this case and the evidence in the record that is dispositive of this issue.

“ ‘A prior judgment operates as a bar against a second action upon the same cause, but in a later action upon a different claim or cause of action, it operates as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.’ ” (*Sutphin v. Speik* (1940) 15 Cal.2d 195, 202.) More to the point, “[i]f the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.” (*Ibid.*) “[T]he rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable.” (*Ibid.*; see also *Tensor Group v. City of Glendale* (1993) 14 Cal.App.4th 154, 160; *California Coastal Com. v. Superior Court* (1989) 210 Cal.App.3d 1488, 1498-1499.)

“The doctrine of *res judicata*, whether applied as a total bar to further litigation or as a collateral estoppel, ‘rests upon the sound policy of limiting litigation by preventing a party who has had *one fair adversary hearing* on an issue from again drawing it into controversy and subjecting the other party to further expense in its reexamination.’ [Citation.]” (*Vella v. Hudgins* (1977) 20 Cal.3d 251, 257.) “The doctrine is also expressed statutorily in Code of Civil Procedure section 1908. *Res judicata* gives conclusive effect to a previous judgment in subsequent litigation on the same controversy.” (*Castro v. Higaki* (1994) 31 Cal.App.4th 350, 357, fn. omitted.)

Here, the allegations in plaintiff's writ petition, filed against the same County entities, center around the notice of violation defendants placed on parcel 29 in 1984. Plaintiff concedes that "[t]he main objective of this writ is to obtain a clear title by making [defendants] remove the violation on parcel 29."

Plaintiff sought the same objective in her 1991 federal complaint, naming the same County entities among the lengthy list of defendants, and alleging claims arising out of the notice of violation and denial of the proposed subdivision of parcel 29. Plaintiff amended the 1991 federal complaint four times, each time adding additional defendants and, as noted by the district court, "enlarg[ing] the text [to add] unrelated allegations asserting acts she found personally objectionable as related to [parcel 29], but referring to the same matters as in the earlier pleading."

Concluding plaintiff's claims were barred by the applicable statute of limitations, the district court dismissed the amended 1991 federal complaint without leave to amend and entered judgment in defendants' favor. The Ninth Circuit Court of Appeals affirmed, and denied plaintiff's request for rehearing. The United States Supreme Court denied plaintiff's petition for writ of certiorari.

Plaintiff attempted to re-litigate the same controversy a second time when she filed her 1994 federal complaint, again naming the same County entities in a long list of defendants, and alleging claims arising out of the notice of violation and the County's denial of the proposed subdivision of parcel 29.

All section 1983 claims relating to development of parcel 29 accruing prior to February 7, 1995, were dismissed by the district court, and plaintiff elected not to amend the complaint to allege any section 1983 claims arising out of development of parcel 29 after that date, despite having been granted leave to do so.

In July 1996, the district court granted summary judgment in favor of the County on all claims alleged in plaintiff's fourth amended 1994 federal complaint, leaving only a

handful of individually-named defendants, none of which were named in the writ petition.

The two federal complaints are clearly based on the same controversy as that on which plaintiff's writ petition is based--the notice of violation on parcel 29. The opinions tendered by the district court in both cases explain, in painstaking detail, plaintiff's claims and the law and facts applicable to those claims. Both cases resulted in judgments against plaintiff, which judgments operate as a bar to another action based on the same cause and, in a later action based on a different claim or cause of action, they operate " 'as an estoppel or conclusive adjudication' " as to any issue actually litigated and determined in the first action. (*Sutphin v. Speik, supra*, 15 Cal.2d at p. 202.)

Like the 1991 and 1994 federal complaints, plaintiff's writ petition is based, at least in part, on the notice of violation on parcel 29. The prior judgments in the federal actions "[are] *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable." (*Sutphin v. Speik, supra*, 15 Cal.2d at p. 202.) Thus, plaintiff's claims regarding the notice of violation are barred by those prior judgments.

The trial court's decision to sustain the demurrer on the basis that plaintiff's claims are barred under principles of *res judicata* and collateral estoppel was also correct.

Plaintiff has not shown there is a reasonable possibility the defects discussed in this opinion can be cured by amendment. As such, the trial court did not abuse its discretion in sustaining the demurrer without leave to amend. (*Aubry v. Tri-City Hospital Dist., supra*, 2 Cal.4th at pp. 966-967.)

We find the trial court was correct in sustaining the defendants' demurrer to plaintiff's petition for writ of administrative mandamus, and that the court did not abuse its discretion in sustaining the demurrer without leave to amend. Accordingly, we shall affirm the judgment.

DISPOSITION

The judgment is affirmed. Defendants are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

_____ HULL _____, J.

We concur:

_____ RAYE _____, P. J.

_____ DUARTE _____, J.