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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SADIE JOHNSON,

Plaintiff and Appellant,

v.

SENIOR FUNDING ASSOCIATES, INC.,
et al.,

Defendants and Respondents.

G050113

(Super. Ct. No. CIVRS1104605)

O P I N I O N

Appeal from a judgment of the Superior Court of San Bernardino County,
Gilbert G. Ochoa, Judge. Affirmed.

Equity Law Group and Lofty Mrich for Plaintiff and Appellant.

Shane, Diguseppe & Rodgers and Stephen A. Diguseppe for Defendants
and Respondents.

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INTRODUCTION

Plaintiff Sadie Johnson appeals from the judgment entered following the trial court's order sustaining, without leave to amend, the demurrer filed by defendants Senior Funding Associates, Inc. (Senior Funding), and Jamie Smith (collectively, defendants) to Johnson's verified third amended complaint. Johnson's verified third amended complaint contained claims for fraud, quiet title, financial elder abuse, intentional infliction of emotional distress, and negligence.

We affirm. For the reasons we will explain, the verified third amended complaint fails to allege sufficient facts to state any claim. The principal flaws in the complaint are (1) Johnson did not have title to the property at the time the alleged misrepresentations were made in 2004, (2) the loan made on the basis of the alleged misrepresentations was paid off in 2006, and (3) there are no alleged misrepresentations regarding the 2006 loan. Because Johnson does not seek to amend the allegations of any cause of action contained in the verified third amended complaint, defendants' demurrer was properly sustained without leave to amend.

We sympathize with Johnson because of the effect of these proceedings on her. Nevertheless, we must conclude under applicable law that the verified third amended complaint's allegations are insufficient to state a claim.

SUMMARY OF ALLEGATIONS AND JUDICIALLY NOTICED FACTS

As discussed *post*, in sustaining defendants' demurrer to the verified third amended complaint, the trial court granted defendants' request that the court take judicial notice of several documents, including various instruments recorded regarding the property. (See *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 194 [a court may take judicial notice of a recorded deed].) Although Johnson opposed the request for judicial notice in the trial court, on appeal, she has not provided any argument

or analysis explaining how the trial court erred by granting that request. Because the allegations of the verified third amended complaint are often confusing, vague, and seemingly internally inconsistent in places, we summarize the allegations contained therein together with pertinent facts of which the court took judicial notice. (*American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1118 [“we treat the properly pleaded allegations of [the . . .] complaint as true, and also consider those matters subject to judicial notice”].)

In 1998, title to a condominium located in Montclair (the property) was transferred from Federal Home Loan Mortgage Corporation to Otha Johnson,¹ via a “Corporation Grant Deed” that was recorded on July 8, 1998. On December 10, 1998, then 61-year-old Otha and then 60-year-old Johnson married.

Senior Funding is in the business of providing real estate agent and broker services. On September 16, 2004, Smith, within the scope of his duties as an agent of Senior Funding, visited Johnson and Otha at the property to solicit a reverse mortgage loan on the property. During the meeting, Johnson asked Smith, “[w]hat if something happened to my husband, what about me?” Smith, who learned during the meeting that Johnson and Otha were married, said, “[y]ou do not have to worry; you can stay in your house until something happen[s] to you or you want to sell it.”

On July 7, 2004,² Smith sold Otha a reverse mortgage on the property. The reverse mortgage deed of trust identified the trustor as “Otha Johnson, an unmarried man” (some capitalization omitted), and Financial Freedom Senior Funding Corporation (Financial Freedom) as the lender and beneficiary (as well as the preparer of the deed of

¹ We refer to Otha Johnson by his first name for the purpose of clarity and intend no disrespect.

² We recognize the complaint alleges the representation was made on September 16, 2004, and the sale was made on July 7, 2004, a date well before the alleged representation. This is an example of many troubling inconsistencies in the complaint.

trust). The deed of trust was executed and notarized on November 12, 2004 (the 2004 reverse mortgage).

On April 26, 2005, Otha executed a quitclaim deed in which he quitclaimed the property to “Otha Johnson and Sadie Johnson.” The quitclaim deed was recorded the same day. On May 6, 2005, Otha executed another quitclaim deed in which he quitclaimed the property to “The Otha Johnson and Sadie Johnson Revocable Living Trust” (the trust).

On April 12, 2006, Senior Funding sent another agent (not Smith) to solicit Otha to purchase a new reverse mortgage loan. Also on April 12, “without the assistan[ce] of [an] independent counseling agency,” Johnson “was tricked into signing an [interspousal] transfer”; the verified third amended complaint does not provide any details regarding who tricked Johnson and how. Presumably, Johnson’s allegation refers to her being tricked into transferring her interest in the property back to Otha.

Defendants’ request for judicial notice included a document entitled “Interspousal Transfer Deed,” through which Johnson granted Otha “a married man” the property “as his sole and separate property,” and by which she relinquished any community interest she might have had in the property. (Capitalization omitted.)

Later in April 2006, Otha committed to a new reverse mortgage loan on the property (the 2006 reverse mortgage).³ The deed of trust securing the new reverse mortgage loan was made on April 12, 2006, and identified the trustor as “Otha Johnson, a married man as his sole and separate property,” and identified the lender and beneficiary as Financial Freedom. (Some capitalization omitted.)

³ The verified third amended complaint alleges the “condominium rider” was forged and the home equity conversion deed of trust was also forged. The complaint does not provide any details regarding those documents or state how those documents were forged or by whom.

On May 17, 2006, Financial Freedom's vice-president, Walter Brown, executed a document entitled "Substitution of Trustee and Deed of Reconveyance" which stated that the deed of trust securing the 2004 reverse mortgage had been satisfied. Consistent with the grant deed transferring the property to Otha in 1998, the substitution of trustee and deed of reconveyance identified the trustor of the 2004 deed of trust securing the 2004 reverse mortgage as "Otha Johnson, an unmarried man" (some capitalization omitted).

On July 3, 2008, a third quitclaim deed was executed by Johnson as having power of attorney on behalf of Otha. The quitclaim deed purported to quitclaim Otha's interest in the property back to the trust.

On March 3, 2009, Otha passed away. Johnson called Smith and told him that Otha had died. On March 22, 2010, a "notice of default and election to sell under deed of trust" was recorded on the property.

The property was sold at auction to the Federal National Mortgage Association (Fannie Mae). On February 28, 2011, Fannie Mae filed an unlawful detainer complaint to evict Johnson from the property. Johnson learned about "the fraudulent transaction" around March 2011; the verified third amended complaint does not clarify which transaction Johnson referred to as "the fraudulent transaction."

Johnson alleged that on "numerous" but unspecified occasions, she had contacted Senior Funding through its agents to explain that she was married to Otha and that defendants "refused to help by giving her a run around."

PROCEDURAL HISTORY

In May 2011, Johnson and the trust, as plaintiffs, filed a verified complaint against defendants, Financial Freedom Acquisition, LLC, "Federal National Mortgage, AKA Fannie Mae," Alliance Title Reverse Mortgage, and Brown. The verified complaint contained claims for fraud, quiet title, financial elder abuse, intentional infliction of

emotional distress, and negligence. The verified complaint was based on the allegations that (1) Smith falsely assured Johnson that she did not need to worry because if something happened to Otha, she would be able to stay in the property until something happened to her or she wanted to sell it; and (2) an instrument relating to the property identified Otha as an unmarried man. Johnson and the trust thereafter filed a first amended complaint, asserting the same five causes of action, and also added OneWest Bank, FSB, and Financial Freedom Senior Funding Corporation as defendants.

Defendants filed a demurrer to the first amended complaint. Financial Freedom Acquisition, LLC, also filed a demurrer to the first amended complaint, which the trial court sustained on the grounds the first amended complaint was uncertain and also because “[p]laintiffs . . . must clearly allege facts with respect to their standing to sue with respect to each defendant. They must also allege the required elements of each cause of action.” The trial court granted Johnson 30 days’ leave to amend the first amended complaint. The court further ruled defendants’ demurrer to the first amended complaint was moot “based upon the Court’s ruling on Defendant Financial Freedom Acquisition’s Demurrer.”

Johnson filed a second amended complaint containing the same claims against the same defendants as were included in the first amended complaint. Defendants filed a demurrer to the second amended complaint. The trial court sustained defendants’ demurrer, stating: “Although different defendants demurred to the FAC [(first amended complaint)], the issues raised by Moving Defendants in the demurrer to the SAC [(second amended complaint)] are substantially the same. A comparison of the SAC to the FAC reveals that the only differences between the two pleadings is that (1) the SAC is brought only by [Johnson], (2) the SAC is not verified, and (3) the SAC does not contain any exhibits. Otherwise the SAC is virtually identical to the FAC, and thus the same defects still remain.” The court granted defendants’ request for judicial notice of documents relevant to the property’s title and mortgages.

In July 2012, Johnson filed the verified third amended complaint that contained the same claims against the same defendants as alleged in the second amended complaint. Defendants filed a demurrer to the verified third amended complaint on the ground that it failed to allege sufficient facts to state any cause of action against them. Defendants requested that the trial court take judicial notice of several documents, including (1) a copy of the corporation grant deed recorded on July 8, 1998, transferring title to the property from Federal Home Loan Mortgage Corporation to Otha, an unmarried man; (2) the deed of trust securing the 2004 reverse mortgage, recorded on November 18, 2004; (3) the quitclaim deed transferring title to the property from Otha to “Otha Johnson and Sadie Johnson,” recorded on April 28, 2005 ; (4) the quitclaim deed transferring title from Otha to the trust, which was recorded on May 10, 2005; (5) the grant deed transferring title to the property from the trust to Otha, a married man, as his sole and separate property, which was recorded on April 18, 2006; (6) the interspousal transfer deed transferring title to the property from Johnson to Otha, a married man, as his sole and separate property, recorded on April 18, 2006; (7) the 2006 reverse mortgage deed of trust on the property, recorded on April 18, 2006; and (8) the substitution of trustee and deed of reconveyance, recorded on June 19, 2006.

Financial Freedom filed a separate demurrer to the verified third amended complaint.

The trial court granted defendants’ request for judicial notice and sustained their demurrer to the verified third amended complaint without leave to amend on the ground, inter alia, that the verified third amended complaint failed to allege sufficient facts to state any cause of action.

The trial court also sustained the demurrer without leave to amend, brought by Financial Freedom, on the grounds Johnson failed to state facts sufficient to constitute a cause of action and because she failed to allege standing. The court observed Johnson’s

causes of action were based on a “loan obligation/origination” to which she was not a party.

In September 2012, a judgment of dismissal was entered in favor of defendants and against Johnson. The trial court also entered the judgment of dismissal of Financial Freedom with prejudice.

Johnson appealed from each judgment. The notices of appeal also identify the trust as an appellant. The Court of Appeal, Fourth Appellate District, Division Two, ordered “appellants” to inform the court whether the trust was a party to the appeal and, if so, to provide a copy of the judgment entered against the trust. The order further directed appellants to provide a copy of the judgment entered in favor of Financial Freedom. Johnson failed to comply with the appellate court’s order. On February 8, 2013, the appeal was dismissed as to the trust and as to Financial Freedom. We therefore do not further refer to the trust and we only refer to Financial Freedom as relevant to the resolution of the issues presented in this appeal.

DISCUSSION

I.

STANDARD OF REVIEW

A judgment following the sustaining of a demurrer is reviewed under the de novo standard. (*McCutchen v. City of Montclair* (1999) 73 Cal.App.4th 1138, 1144; *Bocato v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797, 1803-1804.)

Accordingly, we treat the properly pleaded allegations of a challenged complaint as true, and liberally construe them to achieve ““substantial justice”” among the parties.

(*American Airlines, Inc. v. County of San Mateo, supra*, 12 Cal.4th at p. 1118.)

We consider only the allegations of a challenged complaint and matters subject to judicial notice to determine whether the facts alleged state a cause of action under any theory. (*American Airlines, Inc. v. County of San Mateo, supra*, 12 Cal.4th at

p. 1118.) “Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.]” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

II.

THE TRIAL COURT DID NOT ERR BY SUSTAINING DEFENDANTS’ DEMURRER.

Johnson contends the trial court erred by sustaining defendants’ demurrer to the verified third amended complaint. For the reasons we will explain, the trial court did not err by sustaining defendants’ demurrer because the verified third amended complaint failed to allege sufficient facts to state a cause of action against defendants for fraud, quiet title, financial elder abuse, intentional infliction of emotional distress, or negligence.

A.

The Fraud Cause of Action

The fraud cause of action contained in the verified third amended complaint is purportedly based on three separate theories of liability—false promise, constructive fraud, and actual fraud. Johnson failed to allege sufficient facts to state a fraud claim based on any of those three theories.

The elements of a fraud claim based on a false promise are (1) a promise by the defendant (2) made without an intent to perform and (3) made with the intent to induce reliance by the plaintiff, followed by (4) reasonable reliance by the plaintiff that results in (5) injury to the plaintiff. (Civ. Code, §§ 1572, 1710; *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

“Constructive fraud consists: [¶] 1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one

claiming under him; or, [¶] 2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.” (Civ. Code, § 1573.) “It is generally asserted against a fiduciary by one to whom a fiduciary duty is owed.” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 981-982, fn. 13.)

The elements of actual fraud are (1) the defendant made a false representation as to a past or existing material fact; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. (*Lazar v. Superior Court, supra*, 12 Cal.4th at p. 638.) Fraud must be pleaded with specificity rather than with “general and conclusory allegations.” (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184.)

Johnson’s three theories of fraud are based on the same allegations that Smith, on behalf of Senior Funding, induced Johnson to enter into the 2004 reverse mortgage, by falsely promising that if something happened to Otha, she would be permitted to continue to live in the property until something happened to her or she wanted to sell it. Johnson further alleged that as a result of inducing her to “allow . . . Otha to sign and acquiesce to the reverse mortgage loan,” she suffered financial damages and severe emotional distress from the loss of her home. (Some capitalization omitted.)

The pleading of Johnson’s fraud claims is deficient in several respects. First, the verified third amended complaint is devoid of any allegations describing Smith’s knowledge regarding Johnson’s ownership status in the property at the time he made the alleged statement. (The verified third amended complaint inconsistently alleges that Johnson had an ownership interest in the property, although judicially noticed documents establish that at the time the 2004 reverse mortgage and the 2006 reverse mortgage were entered into, Otha owned the property as his sole and separate property.) No allegations show that Smith was aware Johnson did not have an ownership interest in

the property at the time he made the statement or the content of his alleged statement, as applied to Johnson, was false. Thus, the verified third amended complaint fails to allege that Smith made a false promise, or misled Johnson, much less made an intentional misrepresentation regarding the effect of the 2004 reverse mortgage on her.

Second, the verified third amended complaint fails to show Smith's alleged statement was relied upon by Johnson to her detriment. Johnson did not enter into the 2004 reverse mortgage—Otha did, as the sole owner of the property at the time. The verified third amended complaint does not contain allegations that Otha conditioned his entering into the 2004 reverse mortgage upon Johnson's acquiescence.

Third, and most significantly, the verified third amended complaint does not contain sufficient facts to show that Johnson was injured by Smith's alleged statement or by any other conduct by defendants in connection with the 2004 reverse mortgage because the 2004 reverse mortgage loan was paid off by 2006. Otha thereafter proceeded to enter into a new reverse mortgage loan agreement—the 2006 reverse mortgage. Johnson's alleged injuries were based on her loss of possession of the property following a default on the 2006 reverse mortgage loan and the subsequent auction sale of the property. No allegations show that any fraudulent conduct by defendants, whether in the form of a false promise, constructive fraud, or actual fraud, caused Johnson to suffer those alleged injuries.

The trial court, therefore, properly sustained defendants' demurrer to the fraud cause of action.

B.

The Quiet Title Cause of Action

The verified third amended complaint contains a quiet title cause of action against defendants. An element of a cause of action for quiet title is “[t]he adverse claims to the title of the plaintiff against which a determination is sought.” (Code Civ. Proc.,

§ 761.020, subd. (c); see *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 802.)

Johnson failed to allege in the verified third amended complaint that defendants had any adverse claim as to Johnson, regarding the title of the property. The verified third amended complaint only identifies defendants as acting in the capacity of real estate agents or brokers in connection with the reverse mortgage transactions; Financial Freedom was identified as the lender in both reverse mortgage transactions. Furthermore, the verified third amended complaint alleges that after a notice of default and election to sell the property was recorded, the property was sold in an auction to Fannie Mae, which in turn filed an unlawful detainer action against Johnson.

As the verified third amended complaint alleges no facts suggesting defendants had *any* claims to title of the property, the trial court did not err by sustaining without leave to amend the demurrer to Johnson's quiet title cause of action.

C.

The Financial Elder Abuse Cause of Action

Johnson's cause of action in the verified third amended complaint is for financial elder abuse within the meaning of Welfare and Institutions Code section 15610.30.

Section 15610.30, subdivision (a) of the Welfare and Institutions Code provides: "(a) 'Financial abuse' of an elder or dependent adult occurs when a person or entity does any of the following: [¶] (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both. [¶] (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal

property of an elder or dependent adult by undue influence, as defined in Section 15610.70.”

A plaintiff must plead facts showing two elements to establish elder abuse: (1) the defendant subjected an elder to statutorily defined physical abuse, neglect, or financial abuse; and (2) the defendant acted with recklessness, malice, oppression, or fraud in the commission of the abuse. (Welf. & Inst. Code, § 15657.) An elder is defined as “any person residing in this state, 65 years of age or older.” (*Id.*, § 15610.27.) When an elder abuse claim is brought against a corporate defendant, the plaintiff must further allege that an officer, director, or managing agent authorized or ratified the abuse or neglect. (*Id.*, § 15657, subd. (c); Civ. Code, § 3294, subd. (b).)

In support of the financial elder abuse claim, the verified third amended complaint alleges defendants “have taken, and retained the real ‘property’ of [Johnson] who is over (65) years old, for a wrongful use with intent to defraud her and benefit financially from their fraud.” The verified third amended complaint, however, fails to allege any facts that defendants subjected Johnson to an act of financial abuse by taking away the property within the meaning of section 15610.30 of the Welfare and Institutions Code. As discussed *ante*, no allegations show that at the time Otha entered into the 2004 reverse mortgage and the 2006 reverse mortgage, Johnson had any ownership interest in the property. Thus, the reverse mortgages could not result in taking away the property from her.

Even if the verified third amended complaint alleges Johnson had an ownership interest in the property at the times the reverse mortgages were entered into, insufficient allegations show that defendants assisted in taking the property from her for a wrongful purpose or with an intent to defraud within the meaning of Welfare and Institutions Code section 15610.30, subdivision (a).

In her opening brief, Johnson’s entire argument that the trial court erred by sustaining the demurrer as to her financial elder abuse claim consists of the following:

“Defendant Financial [F]reedom Senior Funding[,] its agents and Financial Freedom [A]cquisition have taken property illegally for a wrongful purpose. Defendants knew or should have known HECM [(Home Equity Conversion Mortgage)] loan protects both spouses. The amount of deceit involved in this case starting at the inception of this transaction when Defendant Ja[mi]e Smith told Plaintiff that she would be keeping her home even after her husband died that representation coupled with forging documents and preparing perjurious deed stating Otha Johnson as an unmarried man. Furthermore Defendants Ja[mi]e Smith and Financial Freedom Senior Funding deprived Plaintiff of her [right] to be informed and obtain a certificate of HUD [(United States Department of Housing and Urban Development)] counseling as a non borrowing spouse. Each fact taken by itself may not persuade this court . . . to agree with us but combined together these facts indeed culminate to induce, undue influence and ultimately to foreclose and attempt to evict Mrs. Johnson wrongfully.”

Johnson’s argument suggests that her claim as against defendants was based on Smith’s alleged statement to Johnson. As discussed *ante*, insufficient facts were alleged to state a claim for fraud based on that statement. Furthermore, no allegations in the verified third amended complaint show defendants prepared any title or loan documents in connection with the 2006 reverse mortgage; thus, allegations that Johnson was deprived of a property interest as a result of others’ acts of forgery or perjury fail to state a claim for financial elder abuse against Johnson.

The trial court properly sustained the demurrer without leave to amend as to the financial elder abuse cause of action.

D.

The Intentional Infliction of Emotional Distress Cause of Action

“The elements of a cause of action for intentional infliction of emotional distress are (1) the defendant engages in extreme and outrageous conduct with the intent to cause, or with reckless disregard for the probability of causing, emotional distress;

(2) the plaintiff suffers extreme or severe emotional distress; and (3) the defendant's extreme and outrageous conduct was the actual and proximate cause of the plaintiff's extreme or severe emotional distress. [Citation.] Outrageous conduct is conduct that is intentional or reckless and so extreme as to exceed all bounds of decency in a civilized community. [Citation.] The defendant's conduct must be directed to the plaintiff, but malicious or evil purpose is not essential to liability. [Citation.] Whether conduct is outrageous is usually a question of fact. [Citation.]" (*Ragland v. U.S. Bank National Assn.*, *supra*, 209 Cal.App.4th at p. 204.)

As to defendants, Johnson's intentional infliction of emotional distress claim was based entirely on allegations of wrongdoing that occurred in connection with Otha agreeing to the 2004 reverse mortgage. For the reasons discussed *ante*, Johnson did not allege facts showing defendants engaged in extreme and outrageous conduct in that regard with the requisite intent.

Johnson's allegations of extreme or severe emotional distress were the result of the default on the 2006 reverse mortgage and the subsequent auction sale of the property to Fannie Mae, not the 2004 reverse mortgage which had been completely paid off. Defendants' demurrer as to the intentional infliction of emotional distress claim was properly sustained.

E.

The Negligence Claim

"The elements of a cause of action for negligence are (1) a legal duty to use reasonable care, (2) breach of that duty, and (3) proximate cause between the breach and (4) the plaintiff's injury." (*Mendoza v. City of Los Angeles* (1998) 66 Cal.App.4th 1333, 1339.)

Johnson failed to allege sufficient facts to support her negligence claim. The verified third amended complaint does not allege facts showing the existence of a legal duty between Johnson and defendants. Defendants sold *Otha* reverse mortgages

regarding the property that Otha owned as his separate property and, thus, any existing duty would have run from defendants to Otha, not Johnson. Even if Johnson had sufficiently alleged the existence of duty, she failed to allege that the breach of any such duty caused her injury. As discussed *ante*, no allegations show that anything defendants said resulted in the default on the 2006 reverse mortgage and the subsequent auction sale of the property. Defendants' demurrer was properly sustained with regard to Johnson's negligence claim.

III.

LEAVE TO AMEND

Johnson did not request that the trial court grant her leave to amend the verified third amended complaint. In her reply brief, Johnson states defendants have argued that she misstated the name of Senior Funding on the caption of her pleading, and asserts: "That is another reason to allow us to amend the complaint so as [to] frame each defendant in its proper name." Johnson has not otherwise made any request for leave to amend any of her causes of action, much less explain how she might amend her pleading to allege sufficient facts to state a claim. "[T]he burden of showing that a reasonable possibility exists that amendment can cure the defects remains with the plaintiff; neither the trial court nor this court will rewrite a complaint. [Citation.] Where the appellant offers no allegations to support the possibility of amendment and no legal authority showing the viability of new causes of action, there is no basis for finding the trial court abused its discretion when it sustained the demurrer without leave to amend. [Citations.]'" (*Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 745.)

Defendants' demurrer to the verified third amended complaint was properly sustained without leave to amend.

DISPOSITION

The judgment is affirmed. In the interests of justice, no party shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.