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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

MANEVA A. CURRIE,

Plaintiff and Appellant,

v.

TIMOTHY O’GORMAN,

Defendant and Respondent.

B236182

(Los Angeles County Super. Ct.
No. SC108184)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Elizabeth Allen White, Judge. Affirmed.

Maneva A. Currie, in pro. per., for Plaintiff and Appellant.

Carmen A. Trutanich, City Attorney, Amy Jo Field and Kjehl T. Johansen, Deputy
City Attorneys, for Defendant and Respondent.

Plaintiff and appellant Maneva A. Currie appeals from a judgment of dismissal following an order sustaining a demurrer without leave to amend in favor of Los Angeles Police Department Sergeant Timothy O’Gorman in this action arising out of a bank foreclosure on residential property. Currie contends that if given leave to amend, she could allege facts sufficient to state a cause of action for conspiracy to force her out of her home. We disagree and affirm.

BACKGROUND

Facts Alleged in the Operative Complaint

In April 2009, Currie rented a house in Los Angeles for a two-year term, where she lived with her adult child Miranda White and her two minor children. A single man rented the detached garage unit on the rear of the property from the owner.

In July 2009, One West Bank, FSB, FKA IndyMac Bank, FSB purchased the house at a foreclosure sale. Currie spoke with a realtor for One West about relocation expenses and the conditions around the house that required repair. Currie submitted a form to One West describing her lease and her concerns about habitability issues. On November 16, 2009, Currie received a notice to cure or quit, which stated she had failed to provide access for the purpose of inspections, repairs, and showing the unit to prospective buyers. Currie denied that she had failed to provide access. Over the next several months, One West’s real estate agent visited the property on several occasions. One West paid relocation expenses to the man living in the garage unit on the property.

On April 21, 2010, a notice of intent to enter the main house was posted at the property to allow One West to cure code violations set forth in a notice of violation issues by the Los Angeles County Department of Public Health. On May 2, 2010, a notice to cure or quit the main house was placed on her front porch concerning access to cure code violations. A representative from One West arrived at the house on May 6, 2010. The One West representative took pictures and referred to a document with information about

the habitability of the premises. One West's real estate agents, construction workers, process servers, and property management employees surprised Currie with unscheduled visits to the property, or they scheduled visits and failed to show up.

On May 8, 2010, Currie received copies of unlawful detainer actions filed by One West as to the rear unit on the property. Currie filed an answer. Prowlers tried to break into the rear unit. On another night, her car was broken into. On May 20, 2010, an unknown man watched and followed her, reporting on her movements using a cell phone, but he later went into a neighbor's home. Currie filed a police report.

At some point, Currie made a 911 call. A police sergeant came to the property to investigate the call. He was alone and treated the matter as insignificant. At the time, an AT&T van was parked around the corner from the house. A man sat in the van for two hours. He appeared to be the same man that had followed Currie another time. She called 911 again later that day.

Procedural Background

On May 27, 2010, Currie and her children filed a complaint against One West and other defendants. On July 6, 2010, One West obtained a judgment against Currie and White for possession of the rear unit on the property. On December 14, 2010, Currie and her children filed the operative verified second amended complaint against One West and other defendants. The complaint alleged causes of action for wrongful forcible entry and detainer proceedings, breach of the covenant of quiet enjoyment, fraud and deceit, injunctive relief, unlawful eviction proceedings, discrimination, defamation, landlord retaliation, quiet title and declaratory relief, breach of contract, legal malpractice, unfair competition, and intentional and negligent infliction of emotional distress.

On April 20, 2011, Currie filed an amendment to the second amended complaint substituting "Sergeant T. O'Gorman" as a Doe defendant. O'Gorman filed a demurrer on June 2, 2011, on the ground that the complaint was uncertain, failed to state facts sufficient to constitute a cause of action against him, and was barred by the broad

immunity under Government Code section 821.6 for actions incidental to instituting judicial proceedings, including investigating crimes. Currie did not file an opposition to the demurrer.

A hearing was held on the demurrer on August 25, 2011. Currie requested leave to amend to allege that police officers usually respond to 911 calls in pairs and O’Gorman was part of a scheme to harass her. The trial court sustained the demurrer without leave to amend. The court entered a judgment of dismissal on August 15, 2011. Currie filed a timely notice of appeal from the judgment.

DISCUSSION

Standard of Review

“‘A demurrer tests the sufficiency of the complaint as a matter of law; as such, it raises only a question of law. [Citations.]’ [Citation.] Thus, the standard of review on appeal is de novo. [Citation.] ‘In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. “We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.” [Citation.] 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.]’ [Citations.]” (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034.)

“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. [Citation.]” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966–967.)

Conspiracy

On appeal, Currie contends that she could amend her complaint to state a cause of action against O’Gorman for conspiracy to force her out of her home. Specifically, if given leave to amend, Currie would allege the following additional allegations. The day that O’Gorman responded to the 911 call, Currie’s friend showed him harmful substances inside a white car parked in the driveway that belonged to US Bank. O’Gorman said that it looked like someone was using the car for storage purposes. Currie’s friend asked O’Gorman to tow the car away. O’Gorman responded that it was a civil matter and he was not a towing service. At Currie’s request, O’Gorman provided a card on which he wrote his name. Currie’s friend called 911 again 30 minutes later and asked if it was customary for a police officer to respond alone to a 911 call. The operator stated that a sergeant can respond alone. The operator was surprised that O’Gorman was still at work, as he had come in early and been out all day. Currie requested a police report, but there is no record of a 911 call and no record of a police report. There is a record of the second 911 call. Currie believes O’Gorman did not write a report of the visit to her house, because he was protecting a scheme to intentionally cause her harm, either to burn down her residence or create an explosion in her house that would kill her and her family.

Even with the proposed amendment, Currie’s allegations fail to allege a cause of action for conspiracy of any kind. “[T]he basis of a civil conspiracy is the formation of a group of two or more persons who have agreed to a common plan or design to commit a tortious act.’ [Citations.] The conspiring defendants must also have actual knowledge that a tort is planned and concur in the tortious scheme with knowledge of its unlawful purpose. [Citations.] [¶] However, actual knowledge of the planned tort, without more, is insufficient to serve as the basis for a conspiracy claim. Knowledge of the planned tort must be combined with intent to aid in its commission.” (*Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1582.) Knowledge and intent “‘may be inferred from the nature of the acts done, the relation of the parties, the interest of the alleged conspirators, and other circumstances’ [citation]” (*Ibid.*)

Currie does not allege that O’Gorman knew any of the other defendants or agreed with any of them to take any action to harm Currie or force her out of her home. No reasonable inference of an agreement could be made based on the allegations. The demurrer was properly sustained without leave to amend.

DISPOSITION

The judgment is affirmed. Respondent Timothy O’Gorman is awarded his costs on appeal.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.