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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THI HO,

Plaintiff and Appellant,

v.

BANK OF AMERICA, N.A. et al.,

Defendant and Respondent.

B227792

B233451

(Los Angeles County

Super. Ct. No. VC056667)

APPEAL of a Judgment of the Superior Court of Los Angeles County. Yvonne T. Sanchez and Thomas I. McKnew, Jr., Judges. Affirmed.

Thi Ho, in pro. per. for Plaintiff and Appellant.

Nicholas Daluiso, Joe Solseng and Robinson Tait for Defendant and Respondent Regional Trustee Service Corporation.

Miles, Bauer, Bergstrom & Winters, Fred Timothy Winters and Daniel L. Carter for Defendant and Respondent L. Bryant Jaquez.

Severson & Werson, Jan T. Chilton and Kerry W. Franich for Defendants and Respondents Bank of America, N.A. and Mike Dunfee.

Thi Ho appeals the dismissal of her claims against defendants Bank of America, Regional Service Corporation, Mike Dunfee, and Bryant Jaquez after the court sustained demurrers and a motion to strike without leave to amend. Appellant's claims rest on her assertion that she had obtained title to the real property at issue in this case by adverse possession. Because the complaint does not adequately plead adverse possession, and because Ho has not indicated that she can amend the complaint to do so, we affirm the judgment.

PROCEDURAL HISTORY

On July 1, 2010, Thi Ho filed an unverified complaint seeking \$12,166,438 in damages against Bank of America, Regional Service Corporation, Mike Dunfee, and L. Bryant Jaquez. The complaint sought to quiet title to property at 9303 Paramount Boulevard, in Downey, California, and alleged illegal eviction, conversion, and fraud. Ho alleged that she was the holder of title to the property by adverse possession, and that her possession had been "actual, open, hostile, continuous, and exclusive . . . in excess of the time period set forth under law." In Ho's complaint, she attached as exhibits documents demonstrating that Bank of America was the holder of title, by virtue of its loan to Yvelises Orta and Javier Romero, the prior owners, in 2008. Following their default, the property had been conveyed to Bank of America by a Trustee's Deed in 2010.

This was not the first pleading in which Ho alleged that she was the proper holder of title to the property.¹ In April, 2010, another individual, Luz Franco, had filed an almost identical complaint alleging that she had title to the same property by adverse possession; Ho attempted to intervene in that action in May 2010, asserting that she had

¹ Nor was it the last. Respondents Bank of America and Dunfee urge that a later ruling, in a bankruptcy proceeding filed by Ho, should be given res judicata effect. For the reasons stated below, we need not reach that argument, which was not before the trial court in any event. For the same reason, while we grant their request for judicial notice as to items A-C, we otherwise deny it.

title by adverse possession. After the trial court denied her motion to intervene, and sustained the demurrer to Franco's complaint, Ho appealed. In affirming the trial court, Division Four of this court held that the denial of her motion to intervene did not prejudice Ho because her complaint failed to state a cause of action.²

In this action, Bank of America, Dunfee, and Jacquez filed demurrers, asserting that the pleadings failed to state a cause of action. The trial court sustained the demurrers without leave to amend as to Bank of America and Dunfee on September 1, 2010, and as to Jaquez on September 8, 2010. The court entered judgment in favor of Bank of America and Dunfee, but not Jaquez on September 16, 2010, and Ho appealed.³ On April 1, 2011, the court granted Regional Service Corporation's motion for judgment on the pleadings without leave to amend. The court entered a judgment as to the entire complaint on June 16, 2011. Ho appealed.⁴ We treat both appeals as taken from the judgment entered on June 16, 2011. (Cal. Rules of Court, rule 8.104 (d)(2).)

DISCUSSION

Ho asserts on appeal in B227292 that the trial court erred in failing to grant leave to amend, in considering the result in the Franco case, in finding no standing, in allowing Jaquez to appear because she claims his counsel was not authorized to appear and, finally, in refusing to consider her untimely opposition to the demurrers. In B233452, she asserts that the court erred in taking judicial notice of fraudulent instruments, in finding she had no standing, and in finding her fraud and quiet title claims each failed to state a cause of action.

She correctly concedes in each appeal that all of her claims rest on her assertion that she has acquired title to the property by adverse possession. Without title to the property, she has alleged no interest in the property that could form the basis for her

² *Thi Ho v. Bank of America*, (Aug. 29, 2011, B225605 nonpub.opn.)

³ B227792.

⁴ B223451.

remaining claims, as she asserts no other claim to ownership, no tenancy on which her wrongful eviction claim could rest, and no interest in the loan transaction that forms the basis for her fraud complaint. As we find she has not adequately pleaded her quiet title claim based on adverse possession, nor demonstrated in the trial court or in this court that she can truthfully allege this claim, we do not reach her other arguments.

Standard of Review

The standard of review on appeal from an order of dismissal after a demurrer is sustained or a motion on the pleadings is granted requires us to independently review the pleadings, accepting all material facts that have been properly pleaded but without assuming the truth of conclusions or allegations of law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967; *Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1120.) Where leave to amend has been denied, we determine whether plaintiff has demonstrated that she can amend the complaint to change the legal adequacy of the pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

Ho Has Not Alleged the Elements of Adverse Possession

The allegations of the complaint relating to Ho's claim of title are found in paragraphs 6.3-6.5 and state:

6.3 Plaintiff is the owner by adverse possession of real property located in Los Angeles County, California and more specifically described as:

LOT 42 OF TRACT NO. 15404, IN THE CITY OF DOWNEY, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 334 PAGES 46 TO 48 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY TAX RECORDER OF SAID COUNTY. TAX PARCEL NO.: 6365-020-015

Property Address: 9309 PARAMOUNT BLVD., DOWNEY, CA. 90240

6.4 Plaintiff's possession has been actual, open, hostile, continuous, and exclusive possession of the said property in excess of the time period set forth under law.

Plaintiff's possession has been actual, open, hostile, continuous and has been exclusive as set forth in Code of Civil Procedure sections 318, 319, 321-323.

6.5 Plaintiff has been in continuous possession during the time period described above in this complaint, adverse to defendants and to all other persons, in support of plaintiff's title to the real property and as curative of any defects in the title, or other defects which might have existed with reference to it.

Ho asserts that her claim of adverse possession must be tested against the standard she quotes from Black's Law Dictionary:

[A]dverse possession. (18c) 1. The enjoyment of real property with a claim of right when that enjoyment is opposed to another person's claim and is continuous, exclusive, hostile, open and notorious. In Louisiana, it is the detention or enjoyment of a corporeal thing with the intent to hold it as one's own. La. Civ. Code art. 3421 [*Sic.*]

It is, however, California law that governs this assessment.

Under California law, to establish adverse possession, a claimant must allege and prove: "(1) possession under claim of right or color of title; (2) actual, open, and notorious occupation of the premises constituting reasonable notice to the true owner; (3) possession which is adverse and hostile to the true owner; (4) continuous possession for at least five years; and (5) payment of all taxes assessed against the property during the five-year period. (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1305; see also *Gilardi v. Hallam* (1981) 30 Cal.3d 317, 321 (*Gilardi*); Code Civ. Proc. § 325.)⁵ As a

⁵ All statutory references, unless otherwise indicated, are to the Code of Civil Procedure.

general matter, the doctrine is strictly construed and the burden of proving all of the essential elements is on the party seeking to assert the right to title. (See *Landini v. Day* (1968) 264 Cal.App.2d 278, 281-282; *Nelson v. Robinson* (1941) 47 Cal.App.2d 520, 528.) Each of the elements must be proved, and the failure to pay taxes on the land to which title is claimed is fatal. (*Gilardi, supra*, at pp. 326-327; *Raab v. Casper* (1975) 51 Cal.App.3d 866, 878 [payment of taxes is essential to claim for adverse possession.]).

There are two insurmountable barriers to Ho's claims in this case. First, she has not alleged when her possession began. Given that she could only assert adverse possession against Bank of America after the trustee's sale by which it acquired title in 2010, her complaint must be read as alleging that her title was perfected prior to that time. Orta and Romero recorded title in 2008, also less than five years prior to the date the complaint was filed in 2011; her adverse possession must therefore have commenced more than five years prior to that time. The complaint, however, does not allege when Ho began to occupy the property, nor has she, in any document filed with the trial court or with this court, given any indication that she can establish the necessary facts.

Second, Ho has not alleged at any time, or even suggested, that she has at any time paid property taxes. The burden is on her to do so; she has not, and on this record, cannot, do so. As our Legislature and Supreme Court have said, this is fatal to her claim. (*Gilardi, supra*, 30 Cal.3d 317.) "In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party . . . [has] timely paid all state, county, or municipal taxes that have been levied and assessed" (§ 325, subd. (b).)

As set forth above, Ho has made prior attempts to plead her interest in this property and, each time, has failed to allege facts sufficient to support her claim. Like the other courts that have considered this, we find nothing in the record that suggests that another opportunity to amend would yield a different result. Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.