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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

HEATHER LINDSAY,

Plaintiff and Appellant,

v.

AJAY AHUJA,

Defendant and Respondent.

B251305

(Los Angeles County
Super. Ct. No. KC063568)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Salvatore T. Sirna, Judge. Affirmed.

Heather Lindsay, in pro. per., for Plaintiff and Appellant.

John Clark Brown, Jr., for Defendant and Respondent.

Appellant Heather Lindsay, in propria persona, appeals from the judgment entered on the trial court's order sustaining respondent Ajay Ahuja's demurrer without leave to amend. The trial court ruled that appellant's contract, good faith and fair dealing, and declaratory relief claims were time-barred and that her violation of Business and Professions Code section 17200 claim failed to state a cause of action. Appellant contends that the statute of limitations should have been tolled because of her mental incapacity. We disagree. The allegations in her complaint demonstrate that appellant was capable of caring for her property and understanding her actions when the claims accrued. As to the 17200 claim, it too is time-barred for the same reason and, in addition, appellant fails to present any law or cogent argument to support her position on the claim. Consequently we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND¹

In 2005, appellant was involved in litigation concerning the sale of her vacant lot in West Covina, California (the Property). As a result of that litigation a judgment was entered against appellant for \$50,000, and when the appellant failed to pay the judgment, the plaintiff commenced foreclosure proceedings on the Property. Respondent, who in addition to his work as a physician, invested in real estate and construction projects, offered to help appellant.² Appellant alleges that respondent orally agreed to lend her the \$50,000 to pay the judgment, the loan to be secured by a deed of trust on the property. The parties agreed that she would pay no interest and repay the loan at \$300 per month beginning in June 2009. Instead of monetary repayment, however, the parties also agreed that appellant could "complete a certain number of jobs for [respondent] in respect to his developmental properties," and that after she had completed the projects, "the loan would be considered paid in full."

¹ The facts described are alleged in appellant's second amended complaint, which this court deemed part of the record on appeal pursuant to appellant's request to augment the record.

² Appellant and respondent, who both live in Connecticut, were social acquaintances for approximately 20 years before appellant filed this lawsuit.

Respondent's real estate lawyer, Mr. Finke, handled the legal aspects of the loan agreement. According to appellant, Mr. Finke did not prepare the loan documents until the last day for appellant to satisfy the judgment. On September 17, 2007, when appellant met with Mr. Finke to complete the note and deed of trust for the Property, he informed her that the terms of the written agreement were different from the terms that respondent and she had previously orally agreed. She, nonetheless, signed the note and trust deed without reviewing them, but believed that the terms were "only different slightly," from the oral agreement. In fact, the material terms of loan differed substantially: "Loan amount of \$66,000.00 at a 9.25% yearly interest rate [adjusted] according to prime as listed in the current index published in The Wall Street Journal plus 1.00% for each monthly payment, not to exceed 15%. The monthly payment was to be \$508.75 commencing October 1, 2007, with [a balloon payment] due on December 17, 2007." The agreement also provided that appellant would pay a "5.00% penalty on the monthly payment if paid later than 15 days." Moreover, in contrast to the oral agreement, the written agreement did not provide appellant with the option to work for respondent in lieu of making payments.

Appellant apparently received \$66,000 and used the money to satisfy the judgment. She never made any payments under the terms of the written note. Instead, she acted in accord with the oral agreement, working for respondent on his various real estate projects. In early 2008, appellant felt that "enough services had been rendered to satisfy the loan," and thus, she "demanded that the debt be considered satisfied." Respondent purportedly agreed that upon completion of one more construction project, he would "wipe the debt clear." Nonetheless, on March 29, 2008, after appellant had completed the last project, respondent did not return the deed of trust. Instead, according to appellant, respondent drugged and sexually assaulted her.

In June 2008, appellant reported the sexual assault to the police, who commenced an investigation. On August 1, 2008, respondent asked appellant to recant the sexual assault allegations in exchange for \$20,000 and the note on her Property. Appellant refused. On August 8, 2008, respondent recorded the deed of trust on the Property at the Los Angeles County Recorder's Office. On September 18, 2008, respondent filed a notice of default, and on December 28, 2008, he recorded the notice of trustee sale. Appellant claims that she did not receive any of the notices. Nonetheless, when she learned that the trustee sale had been scheduled for January 2009, she filed for bankruptcy in an unsuccessful attempt to stop the sale. On June 12, 2009, respondent purchased the property at the foreclosure sale, and thereafter on October 5, 2009, he sold the Property to a third party.

On April 11, 2012, appellant retained counsel and filed the instant action against respondent, Finke and others.³ In her complaint she alleged causes of action for fraud, predatory lending, intentional misrepresentation, wrongful foreclosure, conversion, violation of Business and Professions Code section 17200 (UCL claim), unjust enrichment, quiet title, declaratory relief, breach of the covenant of good faith and fair dealing, and intentional infliction of emotional distress. Respondent filed a demurrer to the complaint, arguing that the causes of action were either time-barred or failed to state a cause of action. Before the hearing on the demurrer, appellant filed a first amended complaint. Respondent filed a demurrer to the first amended complaint. The court sustained the demurrer but granted appellant leave to amend the claims.

Thereafter, appellant filed a second amended complaint. Although the trial court record is not entirely clear on this point, it appears that in connection with amending the complaint, appellant's trial lawyer combined certain claims and abandoned others because the second amended complaint alleged only causes of action for breach of

³ Mr. Finke filed a motion to quash the summons and complaint and was dismissed from the action in July 2012. The other named defendants included the third party purchasers of the Property, the foreclosure sale trustee and respondent's real estate agent. In August 2012, appellant voluntarily dismissed these defendants.

contract, breach of the covenant of good faith and fair dealing, declaratory relief and the UCL claim. The second amended complaint also added allegations that the sexual assault caused her “to be mentally deranged” which “rendered her incapable of caring for her property or transacting business, or understanding the nature or effects of her acts.” Appellant claimed that her mental incapacity tolled the statute of limitations on the claims. Respondent filed a demurrer to the second amended complaint.

On June 18, 2013, the court sustained the demurrer to the second amended complaint without leave to amend. The court ruled that the causes of action were untimely and failed to state a claim. The court rejected appellant’s tolling argument, concluding that her sanity had been restored no later than June 2008 when she reported the sexual assault to the police. The court entered judgment, and appellant filed a timely notice of appeal.⁴

⁴ Respondent seeks dismissal of the appeal, claiming the appellant failed to provide a sufficient record of the trial court proceedings. Specifically, respondent complains that the clerk’s transcript does not contain the second amended complaint, his demurrer to the second amended complaint, appellant’s opposition to the demurrer or respondent’s reply. Based on our review of the appellate and trial court records it appears that when appellant designated the clerk’s transcript on appeal, an error occurred—the list of documents appellant sought to include in the appellate record was not successfully transmitted to the superior court for inclusion in the clerk’s transcript. Appellant, however, subsequently remedied the error through a request to augment the record on appeal, which this court granted. Consequently, respondent’s motion to dismiss is denied as moot.

Likewise we deny as moot appellant’s January 20, 2016, request to augment the record with copies of various documents from the Los Angeles County Recorders’ office file pertaining to the Property because these documents are already among those before this court on appeal. Finally, we deny appellant’s January 20, 2016 request for an extension of time to file a reply brief. This court has previously granted appellant seven such extensions and she has failed to demonstrate good cause for another extension.

DISCUSSION

Although appellant “is representing herself in this appeal she is not entitled to special treatment and is required to follow the rules.” (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 523, fn. omitted.) The burden of establishing trial court error rests with the appellant. (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 766.) She has failed to meet that burden.

Appellant has asserted nearly a dozen arguments in her opening brief, almost all of which are conclusory and undeveloped assertions that have little connection to the causes of action or the arguments she presented in the trial court. For example, appellant claims the trial court ignored “equity issues” by ruling as a matter of law. She fails, however, to identify what equity issues existed or how they related to the causes of action in her complaint or the matters before the trial court. She also declares that the trial court lacked “subject matter jurisdiction” and complains, by assailing various aspects of the deed of trust, that the court should have set aside the foreclosure sale. But, she fails to link these assertions to any specific defect in the judgment. Moreover, several of her appellate arguments pertain to Mr. Finke, who was not a party to the demurrer and was dismissed from the case when the court sustained his motion to quash.⁵ Finally, appellant also complains that six causes of action in the original complaint “disappeared entirely” from the trial court record. Her argument, however, fails to appreciate that her SAC, which she voluntarily filed, superseded the prior complaints.

I. *Appellant’s Breach of Contract, Good Faith and Fair Dealing and Declaratory Judgment Claims.*

In any event, even if the failings in the brief are overlooked, we would still affirm the judgment. The trial court properly ruled that appellant’s breach of contract, breach of the covenant of good faith and fair dealing and her declaratory relief claims were time-barred.

Appellant alleges that she and respondent had a written loan agreement and a separate oral agreement governing the loan for the Property. She does not claim that she

⁵ Appellant did not appeal from the judgment on the order dismissing Mr. Finke.

performed under the written agreement, nor does she assert that respondent breached the written agreement. All of her allegations center on the claim that she fulfilled her obligations under the oral agreement while respondent failed to do so. Given her allegations that respondent breached an oral agreement, not a written agreement, the two-year statute of limitations governing oral contracts applied to her breach of contract claim. (Code Civ. Proc., § 339, subd. (1) [claim based on the oral contract must be brought no later than two years after “the discovery of the loss or damage suffered by the aggrieved party”].) The two-year statute of limitations also governs the good faith and fair dealing claim and the request for declaratory relief. (See *Richardson v. Allstate Ins. Co.* (1981) 117 Cal.App.3d 8, 11 [claim for breach of the covenant of good faith and fair dealing governed by the two-year statute of limitations]; *United Pacific-Reliance Ins. Co. v. DiDomenico* (1985) 173 Cal.App.3d 673, 676-677 [statute of limitations for a declaratory relief action mirrors that of the underlying claim].)

Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that the injury was caused by someone’s wrongdoing; it does not require awareness of the specific facts: “So long as a suspicion exists, it is clear that the plaintiff must go find the facts [and] cannot wait for the facts to find her.” (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-1111.)

Appellant discovered that respondent had breached the oral agreement when, in March 2008, she fulfilled all of her obligations under the oral agreement, and in response to her request that respondent return the trust deed, respondent sexually assaulted her. Given the sexual assault, appellant should have suspected as early as the spring of 2008 that respondent did not plan to comply with his end of the bargain. Respondent’s subsequent commencement of foreclosure proceedings in the fall of 2008, culminating in the sale of the Property in June 2009, confirmed respondent’s breach of the oral agreement. Consequently, appellant’s complaint filed on April 11, 2012, is untimely under Code of Civil Procedure section 339.

Appellant asserts, however, that the sexual assault caused her “to be mentally deranged” and therefore, tolled the statute of limitations. Under Code of Civil Procedure

section 352, the statute of limitations is tolled if the plaintiff is mentally incompetent at the time the cause of action accrued. (Code Civ. Proc., §§ 352, subd. (a), 357; see *Larsson v. Cedars of Lebanon Hospital* (1950) 97 Cal.App.2d 704, 707 [incompetency arising *after* the accrual of the cause of action does not suspend the statute of limitations].) In addition, the statute of limitations is suspended only during the period of the incapacity. (*Feeley v. Southern Pacific Transportation Co.* (1991) 234 Cal.App.3d 949, 952.) For purposes of the tolling provision, “the term ‘insane’ has been defined as a condition of mental derangement which renders the sufferer incapable of caring for his property or transacting business, or understanding the nature or effects of his acts.” (*Hsu v. Mt. Zion Hospital* (1968) 259 Cal.App.2d 562, 571.)

Notwithstanding appellant’s claim that she suffered mental and emotional distress from the sexual assault, her complaint also disclosed her capacity to report respondent’s conduct to the police in June 2008, and to refuse respondent’s efforts to bribe her to recant the assault allegations in August 2008. She also appreciated the need to protect the Property from the foreclosure sale, when she filed for bankruptcy in January 2009. These actions belie appellant’s claim that she was incapable of caring for her property, transacting business or understanding the nature of her acts to a degree sufficient to toll the statute of limitations. (Compare *Feeley v. Southern Pacific Transportation Co.*, *supra*, 234 Cal.App.3d at p. 951 [statute tolled while plaintiff was unconscious]; see, e.g., *Weinstock v. Eissler* (1964) 224 Cal.App.2d 212 217 [statute tolled due to plaintiff’s severe brain damage]; cf. *Snyder v. Boy Scouts of America, Inc.* (1988) 205 Cal.App.3d 1318, 1324 [post-traumatic stress disorder does not count as “insanity” that tolls the limitations period].) Based on the allegations in the complaint, the court correctly concluded that appellant did not meet the standard for tolling.

II. *Appellant’s UCL Claim.*

In her brief appellant does not assert any particular error with respect to the trial court’s ruling that her unfair competition cause of action failed to state a claim. In any case, the trial court did not err in sustaining the demurrer on the UCL claim. Appellant alleged that respondent violated the UCL as follows: (1) “predatory

lending” by changing the terms of the loan knowing that appellant could not meet them; (2) “intentional misrepresentation” by representing that appellant’s work for respondent would satisfy the financial obligation under the loan; (3) violation of Civil Code sections 2923.5, 2924g and 2924h by failing to contact appellant prior to recording a notice of default and failing to provide appellant with various notices; and (4) engaging in other “deceptive business practices” and violating “several California laws and regulations.” As a result of this conduct, appellant allegedly lost the Property through foreclosure.

The UCL permits civil recovery for “any unlawful, unfair or fraudulent business act or practice.” (Bus. & Prof. Code, § 17200.) The UCL has a four-year statute of limitations. (Bus. & Prof. Code, § 17208.) Appellant’s UCL claim based on “predatory lending” allegations is time-barred. Appellant alleged that she knew the terms of the written agreement were different from those of the oral agreement when she signed the loan agreement in September 2007. As a result, the four-year statute of limitations governing the UCL claim expired in the fall of 2011 well before she filed her complaint. Her UCL claim based on the “intentional misrepresentation” allegations is also untimely. Appellant should have discovered that respondent had no intent to forgive the loan or return her Property under the terms of the oral agreement no later than when he sexually assaulted her in March 2008.

Appellant’s UCL claim based on alleged violations of the Civil Code sections governing foreclosure also fails because she lacks standing to bring the claim. To satisfy the standing requirement of the UCL, 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 that economic injury was the result of, i.e., *caused by* the unfair business practice or false advertising that is the gravamen of the claim.” (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322; see Bus. & Prof. Code, § 17204.) Although California courts have recognized that the loss of property through a foreclosure sale is an allegation sufficient to satisfy the economic injury prong of a UCL claim, the loss of a home through a foreclosure sale is not, by itself, sufficient to establish the causation

prong. (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 522-523.) Thus, to survive a demurrer to a UCL claim, the plaintiff's complaint must contain factual allegations of injury resulting from the defendant's violation of the law. (*Id.* at p. 521.) In *Jenkins*, the appellate court rejected a UCL claim based on the violation of the Civil Code foreclosure statutes, explaining: "As [the plaintiff]'s home was subject to nonjudicial foreclosure because of [the plaintiff]'s default on her loan, which occurred before [d]efendants' alleged wrongful acts, [the plaintiff] cannot assert the impending foreclosure of her home (i.e., her alleged economic injury) was caused by [d]efendants' wrongful actions." (*Id.* at p. 523; see generally *Daro v. Superior Court* (2007) 151 Cal.App.4th 1079, 1099 [UCL causation requirement is not met if plaintiff would have suffered "the same harm whether or not a defendant complied with the law."].)

Here, appellant lacks standing to bring an action for unfair competition under the UCL based on respondent's alleged Civil Code violations. The allegations show that the economic loss suffered by appellant—loss of the Property through foreclosure—was caused by her default on the written loan agreement, not by respondent's failure to comply with the foreclosure statutes. (See *Jenkins v. JPMorgan Chase Bank, N.A.*, *supra*, 216 Cal.App.4th at pp. 519, 522-523 [no claim stated under the UCL where the defendant's violation of the Civil Code provisions did not cause the loss of the property].) We, therefore, determine that the trial court properly sustained the demurrer to the Business and Professions Code section 17200 claim.⁶

Finally, it does not appear that another amendment to the complaint would cure the defects in her claims. Consequently, the trial court did not err in refusing to give appellant an opportunity to amend. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

⁶ Similarly, the trial court properly rejected as insufficient appellant's UCL allegations that respondent's other unidentified practices and unspecified violations of the law stated a claim. (*Rosberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1502 [plaintiff's failure to identify which statutes defendants breached or how they violated those statutes is fatal to plaintiff's UCL claim].)

DISPOSITION

The judgment is affirmed. Respondent is entitled to his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.