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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

FENG HAO YANG et al.,

Plaintiffs and Appellants,

v.

JERRY CHEN,

Defendant and Respondent.

B235723

(Los Angeles County
Super. Ct. No. BC447458)

APPEAL from an order from the Superior Court of Los Angeles County. Michael L. Stern, Judge. Reversed.

Law Offices of Edward C. Ip & Associates and David J. Sire, Jr. for Plaintiffs and Appellants.

Jerry Chen, in pro. per. for Defendant and Respondent.

Plaintiffs Feng Hao Yang and Shih Chih Ling Yang sued Defendant Jerry Chen, alleging he had breached a contract with them to provide services related to the renegotiation of their loan. The trial court sustained Chen's demurrer without leave to amend. Because the record demonstrates that the Yangs can amend the complaint to state a cause of action, we find the trial court abused its discretion and reverse.

FACTUAL BACKGROUND

The Yangs filed a first amended complaint against their lender, Bank of America, and Chen on February 1, 2011. Following a demurrer,¹ the Yangs filed their Second Amended Complaint against Chen on May 9, 2011, alleging breach of contract and breach of the implied covenant of good faith and fair dealing. The Yangs attached exhibits to the complaint, which included, as part of Exhibit A, a document entitled "Service Fee Agreement For Principle Reduction" in English, signed by Feng Hao Yang, and a document in Chinese signed by Jerry Chen.²

Chen demurred to the Second Amended Complaint. While he did not dispute the allegation that there was an agreement between the parties, he did assert that the allegations of the complaint were incorrect, and attached a number of documents to his pleadings without either asserting that they were appropriate for judicial notice, or requesting judicial notice. The Yangs opposed the demurrer, objecting to the court's consideration of facts outside the pleadings. The court heard the demurrer on July 19, 2011, and sustained it without leave to amend on the ground that "There is no contract alleged, no contract attached to the Second Amended Complaint and Exhibit B attached

¹ The parties refer to the prior demurrer, but it is not part of the record before us.

² At oral argument, the Yang's counsel asserted that the Chinese document was the same as the English document.

to the Second Amended Complaint is not a contract.” The Court dismissed the complaint on December 5, 2011. The Yangs have appealed.

DISCUSSION

The Standard of Review

On appeal from an order dismissing an action after the sustaining of a demurrer, we independently review the pleading to determine whether the facts alleged state a cause of action under any possible legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 (*Aubry*).) We give the complaint a reasonable interpretation, “treat[ing] the demurrer as admitting all material facts properly pleaded,” but do not “assume the truth of contentions, deductions or conclusions of law.” (*Aubry, supra*, at p. 967; accord, *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126 (*Zelig*).) We liberally construe the pleading with a view to substantial justice between the parties. (Code Civ. Proc., § 452; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

When a demurrer is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion, and we reverse. (*Zelig, supra*. 27 Cal.4th at p. 1126.)

“Where the complaint is defective, “[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his [or her] complaint.”” (*Aubry supra*, 2 Cal.4th at p. 970.) Leave to amend may be granted on appeal even in the absence of a request by the plaintiff to amend the complaint. (*Id.* at p. 971; see Code Civ. Proc., § 472c, subd. (a).) We determine whether the plaintiff has shown “in what manner he [or she] can amend [the] complaint and how that amendment will change the legal effect of [the] pleading.” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

The Complaint Can Be Amended to State Causes of Action

The complaint currently attaches as an exhibit what the Yangs allege is the contract, consisting of two documents, one in English and one in Chinese.³ Neither document contains the signature of both parties, but each is signed by one of the parties. Read together, if they are the same document, they would demonstrate the mutual intent of the parties, indicated by their assent to the same terms. (See, e.g., *Gil v. Mansano* (2004) 121 Cal.App.4th 739, 743.) However, in the absence of a translation of the document in Chinese, we have only the representation of counsel at the hearing below to determine that these are counterparts. Thus, while the complaint is presently an insufficient allegation of a contract, that is a pleading failure that can be easily remedied, based on the record before us.

Defendant below made no claim as to the legal insufficiency of the pleadings, other than to argue that the facts were contrary to the allegations, and filed no responsive brief in this court. Thus, Defendant has shown no legal basis to sustain the demurrer. (*Colm v. Francis* (1916) 30 Cal.App. 742, 752-753 [“It is only the statement of a proposition plainly within the realm of commonplaces to say that, in passing upon the question of the sufficiency or insufficiency of a complaint to state a cause of action, it is wholly beyond the scope of the inquiry to ascertain whether the facts stated are true or untrue. That is always the ultimate question to be determined by the evidence upon a trial of the questions of fact. Obviously, the complaint, when appropriately challenged, whether for want of sufficient facts or for an insufficient or inartificial statement of the facts, must stand or fall by its own force. Nothing *dehors* the pleading itself can be considered to determine whether it is obnoxious to objections made against it as a pleading.”]; *Garton v. Title Ins. & Trust Co.* (1980) 106 Cal.App.3d 365, 375.)

³ Although the trial court referred to Exhibit B to the complaint, Plaintiffs have not asserted that that document was the contract between the parties and, accordingly, we need not consider it in our analysis.

The record contains no other grounds to sustain the dismissal. Accordingly, we will remand to permit the Yangs to amend the complaint.

DISPOSITION

The judgment is reversed and the matter remanded for further proceedings consistent with this opinion. Appellants are to recover their costs on appeal.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.